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HUMAN RIGHTS COMMITTEE

Fifty-sixth session

SUMMARY RECORD OF THE 1474th MEETING

Held at Headquarters, New York,
on Monday, 18 March 1996, at 10.30 a.m.

Chairman: Mr. AGUILAR

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96-80289 (E)

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The meeting was called to order at 10.45 a.m.

OPENING OF THE SESSION

1. The CHAIRMAN declared open the fifty-sixth session of the Human Rights Committee.

STATEMENT BY THE REPRESENTATIVE OF THE SECRETARY-GENERAL

2. Mrs. KLEIN (Representative of the Secretary-General) recalled that the United Nations was currently facing a financial crisis brought about primarily by the non-payment by a number of Member States of their assessed contributions, but also because the Organization's budget for the biennium 1996-1997 had been significantly reduced by the General Assembly. It was clear that the implications of those cuts on the activities of the Secretariat would be quite serious, involving the freezing of posts and reductions in financial resources for every department. Although the Secretariat remained fully committed to servicing the Committee to the best of its ability, those difficulties would unavoidably have an impact on the work of the Human Rights Committee, particularly in respect of the translation, reproduction and distribution of documents.

3. She drew attention to several resolutions on human rights which had been adopted by the General Assembly at its fiftieth session, including resolution 50/171. In that resolution, the Assembly had expressed its satisfaction with the serious and constructive manner in which the Committee was carrying out its functions. The Assembly had renewed its call for the Committee to identify specific needs of States parties that might be addressed through the advisory services and technical assistance programme of the Centre for Human Rights, and stressed the importance of taking the gender perspective into account in the Committee's work. In its resolution 50/170, on the effective implementation of international human rights instruments, the General Assembly had encouraged the efforts of the human rights treaty bodies to examine the progress made in achieving the fulfilment of human rights treaty undertakings by all States parties, even in cases where reporting obligations had not been complied with, and urged all States parties whose reports had been examined by treaty bodies to provide adequate follow-up to the observations and final comments of the treaty bodies on their reports. It had also welcomed all appropriate measures the human rights treaty bodies might take, within their mandates, in response to situations of massive human rights violations, including bringing those violations to the attention of the United Nations High Commissioner for Human Rights, the Secretary-General and the competent bodies of the United Nations in the field of human rights. The Assembly had further requested the High Commissioner to coordinate and consult throughout the United Nations system in that regard.

4. She was unable to brief the Committee on the work of the Commission on Human Rights because the Committee's current session coincided with the Commission's regular session in 1996. Details would therefore be provided concerning the activities of the Commission and its relevant resolutions at the next session of the Committee.

5. The Committee on the Rights of the Child had met twice since the closure of the preceding session of the Human Rights Committee. It had devoted one day to a general discussion on the administration of juvenile justice, focusing on the effective implementation of existing standards as well as the value of international cooperation in that area, particularly through programmes of technical assistance. The Committee on the Rights of the Child had also reviewed the results of the fourth informal meeting it had held in October 1995 in the South Asian region, in the course of which there had been a thematic regional consultation organized by the United Nations Children's Fund (UNICEF) on the issue of child labour.

6. In November 1995, the Committee against Torture had discussed several procedural issues which were considered to require amendments to its rules of procedure. A new rule had been adopted according to which the Chairman was authorized to take action on the Committee's behalf between sessions in order to promote compliance with the Convention if he received information which led him to believe that it was necessary to do so. The Chairman would then report on the action taken to the Committee at its following session. She noted that the Committee against Torture had been receiving a growing number of individual communications. A majority of the cases related to the implementation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, under which States parties should not expel, return or extradite a person to another State where there were substantial grounds for believing that he would be in danger of being subjected to torture.

7. The Committee on Economic, Social and Cultural Rights, at its latest session, had carefully considered the final report of the Working Group on the Right to Development; it had considered that monitoring of the implementation of the Declaration on the Right to Development should be carried out together with the monitoring of economic, social and cultural rights generally. It had expressed its willingness in principle to assume at the appropriate moment the responsibility of monitoring the Declaration.

8. The Committee on the Elimination of Racial Discrimination had adopted two new general recommendations at its latest session. One related to the right to enjoy civil, political, economic, social and cultural rights free of discrimination, and the second to issues of self-determination arising from several articles of the Convention. She recalled that that Committee had adopted a special procedure relating to the review of compliance by States parties whose reports were seriously overdue. The procedure seemed to be working particularly well in relation to the five reviews scheduled for the latest sessions since, in four of these cases, reports had been submitted or firm commitments to submit them had been received.

9. Ms. EVATT expressed surprise that the representative of the Secretary-General had made no reference to the recent session of the Committee on the Elimination of Discrimination against Women.

10. Mrs. KLEIN (Representative of the Secretary-General), replying to Mrs. Evatt, said that both the High Commissioner for Human Rights and the Chairperson of the Committee on the Elimination of Discrimination against Women had been informed by the Secretary-General that the programme budget for

1996-1997 as adopted by the General Assembly in December did not make provision for any change in the current servicing of the latter Committee, so that it would continue to receive support from the Division for the Advancement of Women.

11. With regard to the follow-up to the Fourth World Conference on Women, the Committee secretariat would be circulating a note in which a first attempt had been made to correlate the provisions of the Beijing Declaration and Platform for Action with the provisions of the Covenant.

ADOPTION OF THE AGENDA (CCPR/C/111)

12. The agenda was adopted.

SOLEMN DECLARATION BY A NEWLY ELECTED MEMBER OF THE COMMITTEE IN ACCORDANCE WITH ARTICLE 38 OF THE COVENANT

13. Lord COLVILLE solemnly undertook to discharge his duties as a member of the Human Rights Committee impartially and conscientiously.

ORGANIZATIONAL AND OTHER MATTERS

Provisional programme of work

14. The CHAIRMAN informed the Committee that senior officials of the Government of Peru were currently in Geneva for the session of the Commission on Human Rights, and that the State party had therefore requested that the consideration of its third periodic report should be postponed until the Committee's forthcoming session in July, in order to enable the Government to be represented by an appropriately high-level delegation.

15. Mr. POCAR, noting that agenda item 4, regarding action by the General Assembly at its fiftieth session, did not seem to be reflected in the proposed programme of work, wondered whether the matter would be discussed at the same time as the outcome of the Beijing Conference.

16. The CHAIRMAN said that the details of the programme of work, as well as the use that would be made of additional time that had become available as a result of postponement of consideration of Peru's report, would be discussed at the Committee's next meeting.

17. The provisional programme of work was adopted.

Reports of Chairmen/Rapporteurs of Working Groups

18. Mr. MAVROMMATIS, speaking as Chairman of the Working Group on Communications, said that the Group, which also included Mr. Kretzmer, Mr. Lallah, Mrs. Medina Quiroga and Mr. Prado Vallejo, had met the previous week and adopted 24 recommendations. Twelve recommendations contained draft views on cases to be considered on the merits (including two recommendations combining a draft decision on admissibility with draft views), which, together with the five cases involving draft views held over from the previous session, would make 17

cases to be considered on the merits. Two of the more difficult communications the Committee would be considering raised important issues under articles 4 and 14 of the Covenant. The Working Group had also adopted two recommendations to declare communications inadmissible; two recommendations to discontinue consideration of communications; and eight draft decisions to declare communications admissible.

19. Mr. ANDO, speaking as Chairman/Rapporteur of the Working Group on Article 40, said that the Group, comprising also Mr. Bruni Celli, Mrs. Chanet and Mr. El-Shafei, had adopted draft lists of issues in connection with the reports of five countries, namely, Mauritius, Spain, Zambia, Peru and Guatemala. In the case of Guatemala, the Committee would be considering an initial report.

20. The Working Group had also discussed methods of work and would be circulating a paper to the members of the Committee on topics such as a harmonized approach to consideration of initial and periodic reports, a more efficient way of drafting the Committee's concluding comments, and ways to handle overdue reports and follow-up under article 40. The Working Group had also considered which general comment the Committee should take up next.

Lists of issues to be taken up in connection with the consideration of reports submitted by States parties under article 40 of the Covenant

Initial report of Mauritius (CCPR/C/64/Add.12; HRI/CORE/1/Add.60)

Sections I, II and III

21. Sections I, II and III were adopted.

Fourth periodic report of Spain (CCPR/C/95/Add.1; HRI/CORE/1/Add.2/Rev.2)

Section I

22. Section I was adopted.

Sections II and III

23. Ms. MEDINA QUIROGA, pointing out a minor correction to the Spanish version, said with regard to section II (f) that when the report was considered she would be raising more specific questions orally on Spain's general compliance with all parts of article 14 of the Covenant.

24. Sections II and III were adopted.

Second periodic report of Zambia (CCPR/C/63/Add.3; HRI/CORE/1/Add.2/Rev.1)

Sections I, II and III

25. Ms. EVATT, recalling a communication in connection with which the Committee had found the mandatory death penalty to be a violation of the Covenant, asked whether its earlier jurisprudence had been taken into account in drafting section II (a) on judicial provisions in Zambia.

26. Mr. ANDO observed that while the Committee always followed up on views it adopted on communications, the point raised by Ms. Evatt was a general issue and therefore had not been discussed in the Working Group. She could therefore ask the question orally in due course.

27. Mrs. CHANET noted that the issue of gender discrimination was listed both under section I and again under section III, and the repetition should be eliminated.

28. The CHAIRMAN observed that the Spanish version of section III omitted article 25 from the parenthetical list of articles in the heading.

29. Ms. EVATT said that the problem lay in the fact that both sections I and II referred to articles 24 and 25 of the Covenant, and she proposed that those two articles and related issues should be deleted from section I.

30. It was so decided.

31. Section I, as orally amended, and sections II and III were adopted.

Initial report of Guatemala (CCPR/C/81/Add.7; HRI/CORE/1/Add.47)

32. Mr. ANDO recalled that it was the first time a list of issues had been drawn up for an initial country report, pursuant to a Committee decision in October. The Working Group, uncertain as to the format to follow, had not divided the list into the usual three main sections; but the list generally followed the usual progression of questions in relation to articles of the Covenant.

33. Mr. POCAR observed that when a list of issues was not divided into sections, a procedural problem arose. Since Guatemala would have received the list in advance, it would plan to address it at the outset, and that would not leave time for the Committee to ask additional questions at the first meeting. Yet the second meeting at which the report of Guatemala was to be considered had been scheduled two days after the first precisely to allow the delegation time to prepare answers to such questions. It seemed to him preferable to group the questions into sections and inform the delegation that they would have a strict one-and-one-half-hour time-limit, at the first meeting, to respond to the list of issues. The Committee would then be able also to put further questions.

34. Ms. MEDINA QUIROGA inquired whether it would be possible to submit additional written questions to Guatemala for consideration in conjunction with the list of issues. For example, the wording of issue (d) was too general and needed to be clarified.

35. The CHAIRMAN confirmed that the list of issues could be amended. Indeed, the Guatemalan authorities had indicated that they had had some difficulty in replying to such general points.

36. Ms. EVATT recalled that the Committee had agreed not to tamper substantially with lists of issues. She suggested that the list could be used as a framework for more detailed subsequent oral questions.

37. Mr. KLEIN said that the list of issues reflected a section-by-section approach to the Covenant, which had the advantage of developing a dialogue with the State party. The disadvantage was that the final sections were sometimes not fully discussed owing to time constraints.

38. Mr. KRETZMER said that the disadvantage of the section-by-section approach embodied in the current list of issues was that there would be no time left over to ask additional questions. The State party could therefore limit itself to general replies without having to enter a genuine dialogue. The Committee should also bear in mind that the suggestion to split the list of issues was an experiment which could be subsequently adopted or rejected.

39. Mr. BHAGWATI said that he favoured splitting the list of issues in such a way that attention was focused on specific articles of the Convention.

40. The CHAIRMAN reminded the Committee that the scale of human rights abuses in Guatemala merited a thorough investigation. It would be folly for the Committee not to take as much time as possible to consider the issues raised by the initial report of Guatemala. For that reason he favoured splitting up the list of issues in such a way that the most glaring problems would be dealt with first of all.

41. Ms. EVATT said that she was prepared to accept the Working Group's recommendation that the list of issues should be split into priority and secondary areas of concern.

42. Lord COLVILLE said that the list of issues did not easily divide into neat categories. However, in his opinion the questions raised in issues (e), (f), (i), (k), (m) and (p) required the most attention.

43. Mr. POCAR said that he would be inclined to add issue (h) to the priority category. Since the current procedure was an experiment, the Committee might consider a similar sort of regrouping in periodic reports.

44. Mr. LALLAH said that the Committee was engaged in an experiment with respect to the initial report of Guatemala. In some cases, the Committee needed to look into the implementation of the Covenant in general. Certainly in the case of Guatemala there were serious problems to be addressed. It might be most appropriate for the Committee to retain its earlier procedure, which had had the merit of accommodating all kinds of countries.

45. The CHAIRMAN said that a problem had arisen because the Committee, in its decision on a list of issues for initial reports, had not determined what its procedure was to be. In the case of Guatemala, the Committee needed to decide whether the list was to be divided into sections.

46. Mr. KLEIN said that the Committee could follow the proposal to divide the list into two sections, beginning with the more important issues at the first meeting, and leaving the other issues to the second meeting. Members could group their questions accordingly.

47. Mr. EL-SHAFEI said that no more than two hours should be needed for responses to the list, following which there could be oral questions on those responses. The delegation would then have an intervening day to prepare its replies. The real question was how to promote a useful dialogue.

48. Mr. BUERGENTHAL, supported by Ms. MEDINA QUIROGA, agreed that the proposed division of the list into two sections was sound and should not create any difficulty for the State party.

49. The CHAIRMAN said that the list would thus be divided into two sections: section I would comprise issues (e), (f), (i), (k), (m) and (p), as proposed by Lord Colville, issue (h), as proposed by Mr. Pocar, and issue (a), which was important because of the contradictions apparent from the report between the Covenant and Guatemalan legislation; section II would consist of the remaining issues.

50. He invited the Committee to adopt the list issue by issue.

Issues (a) and (b)

51. Issues (a) and (b) were adopted.

Issue (c)

52. Mr. BUERGENTHAL said that the second question should ask whether the public had been involved in the preparation of the report.

53. Mr. ANDO said that the Working Group has considered that point but, given that each State's method of preparing its report differed, had thought it better to use the current formulation.

54. Mr. BHAGWATI asked whether the usual formulation was not to ask whether the public had been informed of the contents of the report.

55. The CHAIRMAN said that the second question would be amended to refer to the contents as well as to the Committee's consideration of the report.

56. Issue (c), as orally amended, was adopted.

Issue (d)

57. The CHAIRMAN suggested that issue (d) could be deleted.

58. Mr. BRUNI CELLI said that the issue should be retained even if it was general, since it allowed delegations an opportunity to provide explanations.

59. Mr. FRANCIS agreed that it should not be deleted; it appeared in all lists of issues.

60. Mr. POCAR said that it had been a standard inclusion in the past, but that it had subsequently been decided that such general formulations allowed

delegations to avoid coming to the point. Perhaps the issue could be moved to the end of the second day.

61. Lord COLVILLE agreed that issue (d) should be moved to the second day, since many elements that might otherwise be raised under that issue would be better dealt with under other issues on the first day.

62. The CHAIRMAN said that issue (d) would be moved to the end of the second day, and would be amended to refer to factors not so far dealt with in the Committee's consideration of the report.

63. Issue (d), as orally amended, was adopted.

Issue (e)

64. Ms. MEDINA QUIROGA said that issue (e) should also refer to the relationship with the courts of the human rights bodies mentioned in the first sentence.

65. The CHAIRMAN said that wording to that effect would be added.

66. Issue (e), as orally amended, was adopted.

Issue (f)

67. Issue (f) was adopted.

Issue (g)

68. Ms. MEDINA QUIROGA asked whether the report contained factual information on the status of women; if not the question should be more specific. A second sentence should be added to read "Please provide information on the actual situation of women in Guatemala and on particular instances of discrimination brought to the attention of the Government".

69. Issue (g), as orally amended, was adopted.

Issue (h)

70. Ms. MEDINA QUIROGA said that the wording of issue (h) was somewhat jumbled and required clarification.

71. Mrs. CHANET agreed that the wording could be clearer. The Committee should certainly inquire about the impact of the civil war but should also ask what rights had been suspended under the state of emergency.

72. The CHAIRMAN said that issue (h) could be divided into three elements dealing with the civil war, safeguards, and rights under article 4, paragraph 2.

The meeting rose at 1.05 p.m.

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HUMAN RIGHTS COMMITTEE

Fifty-sixth session

SUMMARY RECORD OF THE 1475th MEETING

Held at Headquarters, New York,
on Monday, 18 March 1996, at 3 p.m.

Chairman: Mr. AGUILAR

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ORGANIZATIONAL AND OTHER MATTERS (continued)

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96-80294 (E)

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The meeting was called to order at 3.05 p.m.

ORGANIZATIONAL AND OTHER MATTERS (continued)

Lists of issues to be taken up in connection with the consideration of reports submitted by States Parties under article 40 of the Covenant (continued)

Initial report of Guatemala (continued) (CCPR/C/81/Add.7)

Issue (h)

1. Ms. MEDINA QUIROGA said that, while the report of Guatemala acknowledged the existence of the internal armed conflict, it acknowledged that the Government had not made use of article 138 of the Constitution under which it could declare a state of emergency. She suggested, therefore, that the wording of the question should be amended to reflect that situation: "Taking into consideration paragraphs 39 and 46 of the report, please explain if normal peace-time law is being applied in situations of internal armed conflict and if not, please explain what special legislation is being applied. Please explain the status accorded to the rights enumerated in article 4, paragraph 2, of the Covenant when article 138 of the Constitution is invoked and whether it allows those rights to be suspended."

2. Issue (h), as orally amended, was adopted.

Issue (i)

3. Mr. BÁN said that the question appeared to be limited to recent human rights violations committed during the term of office of the current Government, but he was also curious about government policy on investigating and punishing past human rights violations.

4. Mr. BRUNI CELLI said that the prevailing climate of impunity in Guatemala made it difficult to enforce existing laws. In his view, the question should be oriented towards the concrete measures taken to investigate the specific cases reported. It could be divided into two parts: the first part would deal with the specific cases mentioned in paragraphs 32 to 38 of the report; the second part, with general government policy.

5. The CHAIRMAN noted that although the current Government had been in office only a few months, a major change had already occurred in its discourse. In his view, the Committee needed to know what had taken place since the ratification of the Covenant.

6. Mr. BUERGENTHAL, supported by Mr. BHAGWATI, said that in the third line, the words "and punish" should be inserted after "investigate".

7. Ms. MEDINA QUIROGA said that the reference to punishment should be introduced towards the end of the list, after "to bring those found responsible before the courts".

8. Mrs. CHANET agreed that such a change would recognize the presumption of innocence.

9. Issue (i), as orally amended, was adopted.

Issue (j)

10. Ms. MEDINA QUIROGA said that in obtaining a confession or testimony the Committee should seek to identify who bore the burden of proof that torture had been used.

11. Ms. EVATT said that the word "used" should be replaced by "admitted" in the first line.

12. Mr. KLEIN said that the admission of testimony obtained under torture and the burden of proof were different issues and should be addressed separately.

13. Issue (j), as orally amended, was adopted.

Issue (k)

14. Mr. BRUNI CELLI said that human rights activists should be added to the list of those facing obstacles in the performance of their duties.

15. Ms. MEDINA QUIROGA said that the reference to paragraph 43 of the report did not appear to be relevant and should be deleted. Furthermore, the nature of the obstacles faced should be spelled out.

16. Mrs. CHANET said that taking into account the problems raised in paragraph 43, the Government should be asked what specific measures had been taken to avoid the obstacles to which reference was made.

17. Lord COLVILLE said that, since obstacles were raised by a number of different factions, it might be useful if the Government of Guatemala could explain some of them more fully.

18. Mrs. CHANET said that the Committee could also ask what specific measures had been taken to prevent the recurrence of acts like those mentioned in paragraph 43.

19. Issue (k), as orally amended, was adopted.

Issues (l) to (n)

20. Issues (l) to (n) were adopted.

Issue (o)

21. Mr. LALLAH said the Committee should also ask what special measures of protection under article 24 of the Covenant had been adopted in the specific case of street children.

22. Issue (o), as orally amended, was adopted.

Issue (p)

23. Issue (p) was adopted.

24. Mr. BUERGENTHAL suggested that the first part of issue (p) should be expanded by adding a reference to jurisdiction along the following lines: "Under what circumstances, if any, do military courts have jurisdiction over alleged crimes committed by civilians?".

25. Mr. BRUNI CELLI suggested that a reference to civil crimes committed by members of the armed forces should also be included.

26. The CHAIRMAN said that he would take it that the Committee wished to include an additional issue concerning jurisdiction along the lines proposed by Mr. Buergenthal and Mr. Bruni Celli.

27. It was so decided.

Third periodic report of Peru (CCPR/C/83/Add.1)

28. Ms. EVATT, noting that the Government of Peru had requested that the submission of its third periodic report should be deferred until the fifty-seventh session, suggested that, in the interests of efficiency, the Committee could adopt the list of issues at the current session and make it available to the Government of Peru.

29. Mr. LALLAH, supported by Mr. MAVROMMATIS, Ms. MEDINA QUIROGA, Mr. BRUNI CELLI, Mrs. CHANET, Mr. BHAGWATI and Mr. FRANCIS, said that it would set an unfortunate precedent to provide Peru with the list of issues four months in advance of the presentation of its report before the Committee, thus giving it an unfair advantage over other States parties.

30. Lord COLVILLE said that the Government of Peru should be informed that the Committee reserved the right to amend the draft list of issues before the fifty-seventh session.

31. Ms. EVATT said that providing the State party with the list of issues one session in advance might assist and improve the work of the Committee.

32. Mr. KLEIN said that it was not a matter of preferential treatment but of obtaining the best possible answers to the Committee's questions. In its contacts with the Government of Peru, the Committee should express concern at the last-minute deferral of the report.

33. Mr. POCAR said that the Chairman should send a letter to the Government of Peru emphasizing that the Committee was willing to defer consideration of its report so that the Minister of Justice could be present, and that it looked forward to meeting with a high-level delegation.

34. The CHAIRMAN said that he would proceed as suggested by Lord Colville and Mr. Pocar.

The meeting rose at 3.55 p.m.

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HUMAN RIGHTS COMMITTEE

Fifty-sixth session

SUMMARY RECORD OF THE 1476th MEETING

Held at Headquarters, New York,
on Tuesday, 19 March 1996, at 10 a.m.

Chairman: Mr. AGUILAR

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Third periodic report of Mauritius

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96-80305 (E)

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Third period report of Mauritius (CCPR/C/64/Add.12; HRI/CORE/1/Add.60)

1. At the invitation of the Chairman, Mr. Peeroo and Mr. Seethulsingh (Mauritius) took places at the Committee table.

2. Mr. PEEROO (Mauritius) said that his delegation regretted the late submission of the third periodic report, due in 1988. The fourth periodic report, due in November 1993, would be submitted by December 1997. A Human Rights Unit had now been established in Mauritius to handle the preparation of reports for all human rights instruments to which the country was a party.

3. As a State Member of the United Nations engaged in the promotion and consolidation of human rights, Mauritius was very concerned about the violation of human rights in the Republic of Myanmar and had recently forgone a commercial deal with that country even though it would have been economically advantageous. Mauritius was also acting to promote human rights in the context of the Commonwealth, the Non-Aligned Movement and the Organization of African Unity. At the regional level Mauritius was active in the work of the Asian-African Legal Consultative Committee.

4. His Government was committed to the principles of the separation of powers and the independence of the judiciary. It was intended to appoint a presidential commission to review the judicial system so as to improve the administration of justice and access by the citizen to justice. In particular, the legal aid system would be overhauled to help people from lower-income brackets. The Government also intended to take legislative action to guarantee greater freedom and fairness in elections, which international observers were welcome to monitor.

5. His Government was also committed to the liberalization of broadcasting, which would allow the pluralistic expression of views. To that end an independent broadcasting authority would be established, while provision would be made to prevent any unhealthy concentration of control or ownership of the media.

6. The Government was also introducing legislation to promote a healthy industrial environment and was seeking to reach consensus on industrial relations, following criticism of the Trade Unions and Labour Relations Bill. It was also the intention of the Government to enact legislation to ensure equal opportunities in education and employment, and to establish an equal opportunities commission.

7. To prevent abuses by police officers, a police complaints board, independent of the police force, would be created. In addition, the Law Reform Commission would be requested to make proposals to further consolidate human rights. Lastly, the Government had decided to give wide publicity to the rights

guaranteed under the Covenant so as to create a climate of freedom and awareness of fundamental rights.

8. Mr. SEETHULSINGH (Mauritius) said, with reference to article 1 of the Covenant, that general elections had been held in December 1995 in which 85 per cent of the electorate had voted, with the new Government winning 60 seats to the opposition's 6 seats.

9. With reference to article 2, the Constitution did not establish an official language. The Education Act provided that the medium of instruction was English, while under the Constitution either English or French could be used in the National Assembly. In the courts witnesses could use any of the several languages spoken in Mauritius and interpretation services were made available. In the event of appeal to the Privy Council in London, the proceedings were translated into English.

10. Regarding article 3, the Income Tax Act 1995 gave equal rights to men and women, including married women, in declaring income and claiming deductions. The Constitution had been amended to ensure equality between men and women, so that any law which might discriminate on the basis of sex would be unconstitutional. That amendment had resulted in consequential changes in the legislation relating to citizenship. In particular, children born to Mauritian citizens outside the country were no longer obliged to choose between Mauritian and foreign nationality on attaining the age of majority.

11. With respect to article 5, and the reference in the third periodic report to the case of Heeralall v. Commissioner of Prisons 1992 MR 70, the Supreme Court had reached that decision because no evidence had been adduced before the lower court regarding the existence of an extradition treaty between Mauritius and France.

12. Regarding article 6, the Abolition of Death Penalty Act had come into force in December 1995, and all those who had been sentenced to death but whose sentences had not been carried out had had those sentences commuted to penal servitude for life.

13. With reference to article 9, the Dangerous Drugs Act 1995, not yet in force, would provide for detention in police custody for a period not exceeding 36 hours from the time a person was arrested on suspicion of having dealt in drugs. The aim was to prevent contact with other drug traffickers and to prevent interference with police work or witnesses. Such detainees were allowed access to medical officers.

14. In connection with article 10, regarding the case of the Kenyan national convicted as a drug courier who had given birth while in prison, proceedings were under way for adoption of the child by the convicted woman's sister in Kenya.

15. Regarding article 17, new legislation would allow the authorities to conduct medical examinations of persons suspected of having concealed dangerous drugs inside the body. With respect to article 20, the reference in the third periodic report to the application of the death sentence in the case of certain

treasonable acts was no longer valid. Regarding article 22, the Government had yet to take action on the Trade Unions and Labour Relations Bill.

Constitutional and legal framework within which the Covenant is implemented, state of emergency, non-discrimination and equality of the sexes, right to take part in the conduct of public affairs, and rights of persons belonging to minorities (arts. 1-4 and 25-27 of the Covenant) (sect. I of the list of issues)

16. The CHAIRMAN read out section I of the list of issues concerning the third periodic report of Mauritius, namely: (a) follow-up to the Supreme Court's judgement in the case Union of Campement Site Owners and Ors vs. Government of Mauritius and ors 1984 MR 100 as the legal status of the covenant within domestic law, and, particularly, whether any consideration had been given to incorporating the covenant into domestic law and establishing a mechanism whereby contradictions, if any, between domestic legislation - including the Constitution - and the Covenant could be resolved by Mauritian courts themselves; (b) procedures for the implementation of any views adopted by the Committee under the Optional Protocol; (c) concrete steps which had been taken to disseminate information, in the various languages spoken in Mauritius, on the rights recognized in the covenant and on the Optional Protocol; (d) the extent to which the public had been informed of the Human Rights Committee's consideration of the report; (e) current data concerning the number and proportion of women in the political, economic, social and cultural life in Mauritius; (f) when the announced amendments to Section 16 of the Constitution as well as to the Citizenship Laws aiming at removing remaining grounds for discrimination against women were expected to enter into force; (g) further information on the functions, powers and activities to date of the National Children's Council (NCC) established under the aegis of the Ministry for Women's Rights; (h) the practical measures taken to ensure the effective enjoyment by persons belonging to minorities of their rights under article 27 of the Covenant, such as those relating to the number and proportion of members of minority groups in Parliament and in other high posts in public offices and the senior rank of civil service, as well as on any factors or difficulties faced in that regard.

17. Mr. SEETHULSINGH (Mauritius), referring to section I of the list of issues, said that under the Mauritian legal system treaties were not self-executing; effect was given to the provisions of the Covenant by the Constitution and other laws. Where there appeared to be an inconsistency between the Covenant and the existing laws, the legislation was amended to remove the inconsistency with the abolition of the death penalty. As to procedures for the implementation of any views adopted by the Committee under the Optional Protocol, he referred to the Committee's finding that there had been a violation of the anti-discrimination provisions of the Covenant in a particular case, as a result of which the relevant immigration law had been amended. Mauritius stood by the legal principle of pacta sunt servanda, and legislation would be amended wherever necessary, but no specific procedure existed for the implementation of views adopted by the Committee. In other cases, the Committee on the Prerogative of Mercy, established under section 75 of the Constitution, could recommend to the President of the Republic that he should exercise that prerogative.

18. Referring to sections I (c) and I (d), he said that there was widespread public awareness of human rights and fundamental freedoms in Mauritius, and there was a free press which was very much aware of such issues. The new Government intended to pursue its efforts to give the widest possible publicity to human rights. Amnesty International was very active in Mauritius, as were other non-governmental organizations interested in human rights issues. Information regarding the Covenant and other human rights instruments was being widely disseminated. The public had been informed of the current discussions between the Government and the Committee, and members of his delegation would report to the population after the meetings had ended.

19. Turning to section I (e), he said that there were two women ministers in the Cabinet, and 6 out of the 66 members of the National Assembly were women. That compared favourably to the figure of only two women deputies after the 1991 elections. Women were participating more and more in politics, political parties, and local government. In the economic field, there was still a tendency for women to be employed in such fields as nursing or teaching; there were, however, some women entrepreneurs, and women were well represented in academic pursuits. Regarding the judiciary, the country's nine judges included two women, and 50 per cent of magistrates were women.

20. Regarding women's participation in the country's social and cultural life, Mauritius had a long-standing tradition of active participation by women in cultural activities as writers, artists and poets. Women were also very active in community centres in rural areas, where the teaching of useful skills could improve their situation.

21. Concerning the issue raised in section I (f), he said that the amendments to the Constitution and the Citizenship Laws had come into force in late 1995. In response to the request for additional information on the National Children's Council (NCC), he said that that body had not been a total success, but was to be reactivated. For some time, a system had existed for reporting cases of violence against children; a special telephone number had been established for the purpose, and neighbours were encouraged to telephone if they became aware that children were being subjected to violence. Such cases were dealt with very seriously. A Child Protection Act had been enacted in 1994, establishing provisions to remove children who were being ill-treated from their homes; steps were being taken to provide appropriate places for the care of such children.

22. Referring to section I (h), he recalled that Mauritius had no indigenous population and that the population was made up of various immigrant groups from Asia, Africa and Europe. The rights of all communities were guaranteed under the Constitution. The country's two smallest minorities were of French and Chinese origin, but they were also the most prosperous groups. Regarding all other rights protected by the Covenant, whether of a political or personal character, the Constitution guaranteed their equal enjoyment by everyone. For example, section 14 of the Constitution guaranteed to all religious groups the freedom to establish schools. Such groups were given subsidies without discrimination and often used them to pay their clergy. Regarding employment in public service, there were several special commissions which acted independently and whose decisions were subject to judicial review should any individual feel that his rights had been infringed.

23. Mr. EL-SHAFEI said that the report, although short, was very concise and useful; it showed areas where new developments had taken place in Mauritius, and how the rights and freedoms enshrined in the Covenant had been observed and respected in that country. The functioning of the Supreme Court as described in the report was an excellent example of the separation of powers and should be a source of pride for countries in the region. The multiracial and multicultural nature of Mauritian society, and the harmony existing between different religious and ethnic groups, demonstrated how well human rights and fundamental freedoms were respected.

24. Referring to article 1 of the Covenant, he noted that the report referred to a period from 1969 to 1971 during which a state of emergency had been imposed. The report stated that, under section 18 (1) of the Constitution, it was provided that measures taken in such an emergency should be "reasonably justifiable" in dealing with the prevailing situation; there was no other criterion. Recalling that article 4, paragraph 2, of the Covenant provided that no derogation from certain articles of the Covenant could be made even in situations of public emergency, he wondered whether that had been taken into consideration during the state of emergency.

25. Noting that it fell within the competence of the Supreme Court to decide the validity of elections, he requested more information on that practice, and wondered why it was considered necessary that such decisions should be made by a judicial, rather than a legislative, body.

26. Regarding article 27 of the Covenant, the report stated that the Supreme Court had held that the provisions of the Constitution did not warrant the enactment of personal laws for the various minorities of the country. He wondered whether the representative of Mauritius would not agree that in certain cases personal laws were justified because of the particular cultural characteristics of certain communities.

27. Mr. MAVROMMATIS said that it was gratifying that the Government of Mauritius was represented by such a high-level delegation, which showed the seriousness of purpose with which the Government approached matters of human rights and fundamental freedoms. The shortcomings of the report itself had been substantially compensated for by the high quality of the presentation made to the Committee and of the additional information which had been provided.

28. Noting that the Constitution had been amended in order to introduce the concept of discrimination on the ground of gender, he wondered why other grounds of discrimination such as language, religion and social or other origin had not also been incorporated. He hoped that next time the matter was reviewed, the Government would consider rectifying that omission. Under the heading of article 2, the report stated that both the English and French languages were familiar to a large section of the population; he wondered whether children who had grown up speaking another language or dialect at home did not have some difficulty upon entering school, where instruction was given in English.

29. Article 27 of the Covenant, which guaranteed protection of minorities, and hence authorized affirmative action on their behalf in discriminatory situations, did not override the guarantees against general discrimination under

article 2 of the Covenant. He believed the prevailing practice in Mauritius in respect of article 27 - since it did not have any oppressed minorities - was a good one, and that Mauritius was wise not to adopt personal status laws in matters such as inheritance, evidence, legitimation or monogamy, which might lead to reverse discrimination and run counter to other provisions of the Covenant.

30. Mrs. CHANET, welcoming the abolition of the death penalty, asked whether Mauritius planned to ratify the second Optional Protocol. She also wondered why the Committee had received so few communications from Mauritian nationals under the first Optional Protocol, despite the apparently full press coverage of the Covenant's provisions, and what ways the Government could find to publicize the Covenant more extensively throughout the country.

31. She thought it a matter of concern that the Supreme Court of Mauritius had held that it had no jurisdiction to invalidate breaches of the Covenant that were permissible under sections of the Constitution incompatible with its provisions. She would like to know what legal remedies were available in such cases, in the absence of any legislation amending the Constitution.

32. In the case of the protection of minorities under article 27 of the Covenant, the Committee's general comment on that article had clearly stated that articles 2, 3 and 26 of the Covenant could not be overridden in the name of the cultural rights of an ethnic community. By the same token, it was not clear why, when section 16 of the Constitution had been amended to include protection against discrimination on the ground of sex, it had been decided to retain, in subsection (4) (c), the broad exception in respect of personal status law, an exception that violated articles of the Covenant to which Mauritius subscribed.

33. With regard to article 24 of the Covenant, she noted that Mauritian law allowed children to be kept with their mothers in prison until the age of 4, a situation which surely cut them off from necessary outside developmental factors.

34. Ms. EVATT said that Mauritius was a country that respected the rule of law and the rights of its citizens. Especially commendable were the recent abolition of the death penalty, the improvements in the status of children, the specific amendments to the citizenship law, which had been an important area of discrimination, and the amendment of section 16 of the Constitution.

35. She assumed that section 16 of the Constitution, as amended, would override all inconsistent legislation. The wording of section 16 (3), however, could be taken to preclude affirmative action because it included in its description of discrimination any privileges or advantages accorded to one group that were not accorded to another group; and it would be interesting to learn if there had been any applications or interpretation of that particular provision of section 16 (3). Noting the very wide exception made with regard to personal laws relating to property, marriage and the like under section 16 (4) (c), possibly incompatible with the Covenant, she wondered about the status of personal law in the Mauritian legal system and to what extent it provided for different rights between husband and wife or between parents. A

further explanation of the Bhewa case, which had been alluded to twice in the report (with reference to the maintenance of monogamy (and of Muslim marriage), would be useful. The status of polygamous marriage in Mauritian law was unclear. Also, if the amendments to the Constitution had indeed fully established equality between spouses, would Mauritius thereby be led to withdraw its long-standing reservations in that connection to the Convention on the Elimination of All Forms of Discrimination against Women?

36. In addition to the amendments to section 16 of the Constitution, which applied only to legislation and public functions, Mauritius ought to consider the adoption of general anti-discrimination laws reflecting the general prohibition of discrimination under article 26 of the Covenant, thus affording a general guarantee of equality and non-discrimination in all sectors.

37. She welcomed the establishment of the Equal Opportunity Commission and asked whether equal pay in both public and private employment was guaranteed by law.

38. The extent of discrimination against aliens needed clarification: they did not benefit from the protection of section 16 of the Constitution, whereas articles 12, 13 and 25 of the Covenant permitted only limited exceptions to equal rights in the case of non-citizens.

39. Regarding emergency laws, further information would be useful on how section 18 of the Constitution was applied and what laws gave it full force. Section 18 appeared to allow the anti-discriminatory provisions of sections 6 and 16 of the Constitution to be overridden, in contrast to article 4 of the Covenant, which did not allow discrimination in any measures adopted in time of public emergency.

40. In connection with articles 25 and 1 of the Covenant, it would be interesting to know the outcome of the UDM case, whether the election result had been set aside and how it had affected the complainant's right to stand for Parliament. Information on the procedures for election to the seats in Parliament reserved for ethnic candidates would also be useful.

41. Mr. KRETZMER, endorsing Mrs. Chanet's and Ms. Evatt's remarks on the amendment to the Constitution, said that, given the distinctions in practice because of the multiracial traditions in Mauritius, it was still not clear, in the light of section 16 (4) (c) of the Constitution, what status personal law had in relation to civil law in Mauritius, and what areas of personal law might lead to discrimination between men and women.

42. Mr. BÁN observed that Mauritius had clearly made considerable strides in the field of human rights since the previous report: the Constitution had been amended in substantial points, the death penalty had been abolished and a series of anti-discrimination laws had been adopted. He wondered in that connection whether the amendment of section 16 of the Constitution would now set aside section 242 of the Criminal Code, which did not provide for equal treatment of men and women. Also, he would like an explanation of the terms "race, caste, place of origin", as they were used in section 16 of the Constitution.

43. It was difficult to assess the real status of the Covenant in Mauritius's legal system because of contradictory statements on the matter in various parts of the report. Document HRI/CORE/1/Add.60 indicated (para. 12) that the terms of the Covenant as such were not directly enforceable by the courts, and the report itself indicated that the Supreme Court had no jurisdiction to invalidate breaches of the Covenant. Since the Government had incorporated the Geneva Conventions into its law, it was difficult to see why the same could not be done in the case of the Covenant. Did the Government have any intention of reconsidering the status of the Covenant in domestic law?

44. In connection with article 25 of the Covenant, the Attorney General had suggested in his remarks that there was dissatisfaction with the election laws and a reform was planned: an explanation of the main problems with the current legislation would be appreciated.

45. Mr. KLEIN observed that the amendment of section 16 of the Constitution had resolved many inconsistencies with the Covenant and was to be commended. He wondered whether there were any plans to amend section 242 of the Criminal Code, which the report described as one of the last vestiges of sexual discrimination in Mauritius.

46. Although the report described the Guyot case as a case not of gender discrimination but of alien/citizen discrimination, he was inclined to think that the complaint did indeed involve discrimination based on sex. It would be interesting to know if the case would be decided differently now, after the prohibition of sex discrimination under amended section 16 of the Constitution. In any case, the court decision cited seemed to be inconsistent with article 3 of the Covenant.

47. Mr. ANDO said that he would welcome more information about the place of the Covenant in the domestic legal system of Mauritius; he was concerned that in cases where the Supreme Court had uncovered a discrepancy between domestic law and the provisions of the Covenant, the Mauritian courts could do little to remedy the situation. That function apparently devolved on the Human Rights Committee, whose decisions had no legally binding force. It was surely more sensible for the domestic courts to implement the provisions of the Covenant.

48. With regard to the issue of discrimination on grounds of sex, he agreed that it was very difficult to determine de facto instances of such discrimination, particularly in a multiethnic society where different customs obtained. He would be grateful for more details on specific measures that had been taken to combat such discrimination in accordance with the provisions of the Covenant, for example in the field of personal law, inheritance and ownership of property.

49. He also required further clarification on the legal concept of minorities in Mauritian jurisprudence.

50. Mr. BHAGWATI, referring to section 16 (2) of the Constitution, asked whether the prohibition of discrimination mentioned therein applied to persons working in public sector corporations. Since both foreign husbands and foreign

wives of Mauritian citizens required a work permit under the new legislation on restrictions on the employment of non-citizens, a court might simply take the view that neither the husband nor the wife of a Mauritian citizen should obtain such a permit, thus eliminating altogether the possibility of discrimination in that area.

51. He indicated that section 16 (4) (b) of the Constitution of Mauritius appeared to discriminate against persons who were not citizens of Mauritius and thus violated article 26 of the Covenant. The Mauritian authorities should also clarify their position with regard to extradition. If a court found that an extradition order would deprive an individual of entitlements under Mauritian law, he wished to know whether such an order would still be made.

52. Noting that detention in police custody was allowed for a maximum of 36 hours without charges being brought before a court, he wondered whether such a provision violated article 9, paragraph 3, of the Covenant.

53. The reporting State should have indicated whether it had an equal remuneration act or an act specifically preventing discrimination in employment. In addition, section 16 of the Constitution appeared to rule out the possibility of affirmative action, and additional information would be welcome on whether that was indeed the case. Finally, he wished to know whether the Mauritian authorities had disseminated the contents of its reports to the Committee before submitting them, and whether individuals had direct access to the Supreme Court without having to pass through the entire judicial system.

54. Mr. BUERGENTHAL asked whether the population of the islands of Agalega and St. Brandon were represented in parliament and, if not, how the Mauritian Government intended to enfranchise them.

55. Lord COLVILLE, referring to the "persuasive character" of the provisions of the Covenant mentioned in paragraph 12 of the core document (HRI/CORE/1/Add.60), asked the representatives of Mauritius to provide examples of such persuasive force. It would be interesting to know whether, in Mauritius as in some other countries, interpretations of points of law that favoured the provisions of the Covenant were automatically preferred to other interpretations.

56. In connection with article 24 of the Covenant, it would be useful to know what account, if any, was taken of the views of children in legal proceedings, for example in cases involving family violence.

57. Ms. MEDINA QUIROGA voiced concern that the category of persons mentioned in section 16 (4) (c) of the Mauritian Constitution had been barred from taking advantage of anti-discrimination laws, especially in the light of section 16 (6). She also asked whether a distinction between legitimate and illegitimate children was still maintained in Mauritian law, and whether both categories enjoyed equal rights in respect of child support and ownership of property.

58. Mr. SEETHULSINGH (Mauritius) said that there could be no derogations from articles 6, 7, 8, 11, 15, 16 and 18 of the Covenant, even in a state of emergency. However, it was true that section 18 of the Constitution permitted derogations from section 16 of the Constitution in such circumstances.

59. Regarding the point that had been made about determining the validity of elections, he said that the Mauritian authorities believed in the separation of powers and therefore considered it undesirable for an elected body to decide on the validity or otherwise of elections. Courts were the appropriate places to settle matters pertaining to validity and qualifications of candidates.

60. With regard to the repercussions of the Bhewa case mentioned in the third periodic report (CCPR/C/64/Add.12*), he explained that section 16 (4) (c) of the Constitution left the door open for the potential enactment of supplementary personal law while avoiding the charge of unconstitutionality. Mauritian personal law was based on the French system, and had been updated in 1981 to take account of corresponding changes that had been made to that system in France.

61. Responding to the charge that section 16 of the Constitution made no mention of discrimination on the grounds of language, social origin or religion, he explained that discrimination on religious grounds had already been ruled out by section 11, dealing with freedom of conscience. Regarding the language issue, there was no bar to teachers instructing their pupils in local languages, but no examinations were held in those languages since they lacked a standard script. Compared to English and French, local languages had a very limited application and there was little point in using them for anything but day-to-day communication.

62. On the issue of accelerated acquisition of citizenship in return for substantial investment in the country, he said that the Mauritian authorities did not regard the question as one of discrimination but as one of economic reality. Like other countries, Mauritius tried to attract as much investment as possible and individuals who created employment and facilitated the transfer of technology were rewarded accordingly.

The meeting rose at 1 p.m.

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HUMAN RIGHTS COMMITTEE

Fifty-sixth session

SUMMARY RECORD OF THE 1477th MEETING

Held at Headquarters, New York,
on Tuesday, 19 March 1996, at 3 p.m.

Chairman: Mr. EL-SHAFEI
(Vice-Chairman)

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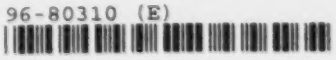

In the absence of Mr. Aquilar, Mr. El-Shafei, Vice-Chairman, took the Chair.

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of Mauritius (CCPR/C/641/Add.12 and HRI/CORE/1/Add.60) (continued)

Constitutional and legal framework within which the Covenant is implemented, state of emergency, non-discrimination and equality of the sexes, right to take part in the conduct of public affairs, and rights of persons belonging to minorities (articles 1, 2, 3, 4, 23, 24, 25, 26 and 27 of the Covenant) (section I of the list of issues) (continued)

1. The CHAIRMAN invited the representative of Mauritius to continue his replies to the oral questions relating to section I of the list of issues.

2. Mr. SEETHULSINGH explained that a supplementary report had been necessary because since circulation of the third periodic report in June 1995, the Constitution of Mauritius had been amended to abolish the death penalty. Responding to questions about the issues of affirmative action under section 16 of the Constitution, and discrimination, he pointed out that Mauritius was a nation of immigrants with no indigenous inhabitants; there were no victimized groups and there was no history of oppression, slavery having been abolished back in the 1830s. There had been no religious or racial oppression requiring affirmative action so that it had not become an issue. There were of course examples of affirmative action in the form of legislation to promote the interests of disadvantaged groups like the disabled, and it was hoped that legislation would be implemented soon. There was also a possible case of discrimination against the island of Rodrigues, situated 350 miles north-east of Mauritius. Its 35,000 to 40,000 inhabitants (out of a total population of 1.1 million) had suffered some disadvantage in the area of education and therefore the Government had decided to institute special scholarships for its primary level students and those who finished secondary school. No other groups received special treatment.

3. With regard to the question of equal pay for equal work, he stressed that in accordance with an amendment to section 16 of the Constitution, failure to provide equal pay for equal work was unconstitutional, but no such cases had come before the courts.

4. Responding to a question concerning traditional customs which affected women's rights to which reference had been made in the second report, he stated that rapid economic growth was leading to the gradual disappearance of cultural traditions which tended to discriminate against women. Moreover, the existence of a caste system similar to that in India was an unfortunate accident of history and although it was legitimized in the 1968 Constitution, it was never really practised.

5. Section 242 of the Criminal Code under which a husband was entitled to kill his adulterous wife could be dealt with by an amendment to section 16 of the Constitution. Certainly societal attitudes had changed so radically that killing one's partner for adultery could not be condoned. The letter of the law was not applied in the Grailov case because of section 16 and the courts would undoubtedly take section 16 into account in the future.

6. With regard to legal aid, he noted that the Rassoul case mentioned in the third periodic report was typical of cases involving drug couriers - often very poor Indians who were paid little and used by the major drug traffickers. Since they could not afford legal counsel, the Legal Aid Act entitled them to legal assistance when appearing before the Supreme Court, that is with a judge only. However, legal aid was not available if an appeal was made to the Privy Council in London. If, however, the Privy Council decided that the appeal was receivable based on some important point of law, it could request the Government of Mauritius to provide legal aid to the claimant, as in the Boucherville case described in the third periodic report.

7. The practice of having the children of female prisoners remain with their mothers in prison until the age of four had always been deemed necessary for breast-feeding and child care. However, the Government was considering leaving the children with their mothers only until the age of two.

8. Although the second report had contained only two communications under the First Protocol, the legal community in Mauritius was well aware of its right to petition the Human Rights Committee and a small number of communications might be seen as a tribute to the Mauritius legal system.

9. The citizens of Agalega and St. Brandon had not been eligible to vote in the previous elections because there had not been enough time to register them as voters due to the sudden election call. The new Government was committed to ensuring that they would be eligible to vote in the next elections and that the Electoral Boundaries Commission would assign them to the appropriate constituency.

10. Aliens in Mauritius did not have the right to social security, to vote or to employment in the public service. However, the Prime Minister's office could grant them work permits and residency credentials.

11. Concerning the applicability of the Covenant and whether the courts were bound to apply the Covenant, he stated that the courts were encouraged to refer to the Covenant and many of its provisions were in any case embodied in chapter 2 of the Constitution and in other laws. Citizens who believed that their human rights had been violated under section 17 of the Constitution could appeal to the Supreme Court and could be eligible for legal aid and some cases had actually been heard by the Supreme Court.

12. The new Government was committed to ensuring that future elections would be truly fair and free and to inviting international observers to monitor the democratic process.

13. The rights of succession of adulterine children would be protected if they could produce proof of their parental affiliation. The National Children's Council dealt with cases of violence against children or abuse of children's rights. In court cases, however, the judge would ask a probation officer to investigate the home situation to see if the children were being mistreated and if their needs were being met, and then to make a report to the court.

14. With regard to the practice of holding some prisoners incommunicado for 36 hours, in possible contravention of article 9 of the Covenant, and hindering their prompt access to the courts, he said that that practice was used mainly for drug traffickers and in any case did not prevent the accused from making application for an urgent writ of habeas corpus.

15. On the question of representation in the parliament, he pointed out of the 8 reserved seats out of a total of 70 the first 4 seats were allotted to communities which were underrepresented in parliament after the elections, and the second group of 4 seats were allotted to the winning party or parties to guarantee that there would be no imbalance after all the seats were filled.

16. Responding to concerns that parastatal or public sector organizations or corporations enjoyed some advantages over public sector corporations, he reassured the Committee that there was no discrimination in favour of such bodies at any level of government.

17. The report from Mauritius had been submitted late because, owing to the lack of personnel and resources, the Department of the Public Prosecutor and the Solicitor-General had often given precedence to criminal cases over human rights violation claims. That was no longer the case and Mauritius was now up to date in its reporting and would be ready to submit its fourth report whenever requested by the Committee.

18. The CHAIRMAN thanked the representative of Mauritius and asked the Committee if it had any supplementary questions.

19. Mr. BHAGWATI inquired whether article 16, subsection (4), part (b) of the Constitution excluded non-citizens from protection against discrimination possibly in violation of article 26 of the Covenant.

20. Mr. MAVROMMATIS, speaking as Special Rapporteur for Follow-up on Views, said that although the State party had made an honest effort to implement the Committee's views and the Covenant, he felt that stricter compliance with international instruments and more enabling legislation to reflect the views of the Committee based on individual complaints was necessary if compensation was to be paid.

21. Mr. SEETHULSINGH replied that the Law Reform Commission had been set up for that purpose.

Right to life, treatment of prisoners and other detainees, liberty and security of the person and right to a fair trial (articles 6, 7, 9, 10 and 14 of the Covenant) (section II of the list of issues)

Freedom of conscience, religion, expression, assembly and association (articles 18, 19, 21 and 22 of the Covenant) (section III of the list of issues)

22. The CHAIRMAN read out section II of the list of issues concerning the third periodic report of Mauritius, namely: (a) information on any consideration given to accession to the Second Optional Protocol, given the adoption of Death Penalty Act 1995; (b) the rules and regulations governing the use of weapons by the police and security agents; whether there had been any violation of those rules and regulations and, if so, what measures had been taken against persons found guilty of such acts and what had been done to prevent a recurrence; (c) the outcome of investigations requested by the Director of Public Prosecutions into recent allegations of death following police brutality, whether there had been any other complaints, during the period under review, of torture or other inhuman or degrading treatment or punishment and arbitrary detention, and if so, whether any investigation had been carried out and any action taken by the authorities to punish members of the police and other security agents found guilty of such acts; (d) further information on the functions and activities to date of the Commissioner of Prisons and on the extent to which article 10 of the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners were complied with, and whether the latter provisions had been made known and accessible to the police, prison personnel and other persons responsible for interrogations, as well as to persons deprived of their liberty; (e) information on the law and practice relating to incommunicado detention as well as on the other practices mentioned in the report, such as handcuffing of detainees and forfeiture of the detainee's earning for a period of up to six months.

23. Under section III, the issues were: (a) the legal provisions governing the expulsion of aliens and whether an appeal against an expulsion order had suspensive effect; (b) the laws and regulations governing the recognition of religions or religious sects and the subsidizing of their activities by public authorities; (c) information on the implementation by the administrative authorities of the provisions of the Criminal Code relating to "publishing false news" and "libel"; (d) the relevant regulations and procedures under which literary works can be prohibited in Mauritius and the safeguards and remedies which were available to the authors concerned; (e) additional information on the implementation in law and practice of articles 21 and 22 of the Covenant and on whether the Trade Unions and Labour Relations Bill had already been adopted.

24. Mr. SEETHULSINGH, responding to the issue raised in section II (a), said that due consideration would be given to accession to the Second Optional Protocol and a decision would be taken.

25. In reply to section II (b), he pointed out that Mauritius had no armed forces other than a special mobile force made up of police officers detached from the police force for a specific tour of duty. Normally the police and security agents were not armed and rules and regulations governing their use of weapons were contained in the Police Act and were reserved for special

circumstances such as protecting persons under threat from drug traffickers. He could not recall any cases of the illegal use of weapons by the police and reassured the Committee that if police brutality could be proved, the officers involved would be prosecuted.

26. Turning to section II (c), he noted that one case of police brutality was being prosecuted and another reported case was under investigation, and if substantiated, the officer involved would be prosecuted and punished if found guilty.

27. Referring to section II (d), he stated that the Reform Institutions Act mentioned in the second report had come into force, prisoners were treated as humanely as possible and prison authorities were very much aware of the standards for the treatment of prisoners. Though the Penal Code contained a reference to hard labour, there was in fact no hard labour. Inmates did work in prison that taught them skills, their sentences could be reduced for good conduct, they had opportunities for recreation and study by correspondence, visits from relatives were allowed and they had access to legal advisers. During questioning, Mauritius followed the British practice of informing the prisoner of his right to remain silent and to legal counsel.

28. As for section II (e), punishments such as hand-cuffing or forfeiture of detainees' earnings were reserved for extreme cases where the prisoners had been totally out of control and could only be imposed after a hearing before the Prisons Board. The Board was chaired by a senior magistrate and was composed of state law officers such as representatives of the Attorney General.

29. Turning to section III of the list of issues, he said that the Deportation Act and the Immigration Act governed the expulsion of aliens, and an appeal did indeed have a suspensive effect. Illegal aliens could be deported, as could persons with criminal records entering Mauritius; many in the latter category had been found to be encouraging drug trafficking and prostitution.

30. Under section 14 of the Constitution, religious groups had the freedom to establish schools. The law gave statutory legitimacy to the governing bodies of religious groups, thereby enabling them to be subsidized by public funds. Such parliamentary subsidies were used mainly to provide salaries for clergy.

31. With regard to section III (c) and (d), he noted that Mauritius enjoyed freedom of the press. Journalists who published material without proper verification, however, could be subject to prosecution or be found in contempt of court. Mauritian society, though quite diverse, enjoyed a fragile harmony and the Civil Code contained provisions penalizing incitement to racial hatred. Out of respect for the culture and religion of all, therefore, such works as The Satanic Verses, The Rape of Sita and the film The Last Temptation of Christ had been banned in Mauritius.

32. Referring to section III (e) of the issues, he pointed out that the whole matter of the Trade Unions and Labour Relations Bill was being reviewed by a labour advisory board established by the new Government, in which all parties were represented. The trade unions had expressed dissatisfaction with the Bill,

and the Government was understandably reluctant to proceed without their agreement.

33. Mrs. CHANET said that some elements of the responses by the delegation of Mauritius raised concerns about the compatibility of domestic legislation with the Covenant. For example, article 8 of the Covenant prohibited forced labour by prisoners, yet the report stated that, when found guilty of a minor prison default, they could forfeit their earnings for work performed in prison, which amounted to forced labour. Furthermore, such sanctions were not based in legislation, but on an administrative decision by prison authorities, which provided few guarantees. By basing the length of pretrial detention on the severity of the sentence attached to the alleged crime, the authorities were in disregard of the presumption of innocence and in contravention of article 9 of the Covenant. The representative of Mauritius had affirmed the suspensive nature of judicial appeal with regard to expulsion of aliens, but in one case mentioned in the report, it appeared that the deportation had been carried out before the appeal had been heard, and she would welcome further elucidation of that point. The decision to censor works of literature was an administrative decision, and she wondered whether there was any appeal procedure.

34. Mr. PRADO VALLEJO inquired what the Government was doing to stop violations of human rights committed by the police forces and to prevent their recurrence. Concerning the incidents of police brutality mentioned in the report, he wished to know whether the perpetrators had been punished and the victims compensated. It was his impression that sentences for crimes relating to drug trafficking were disproportionately severe; he would welcome further details. He wondered whether the police were given training and basic education in human rights.

35. With regard to article 9 of the Covenant, it would be interesting to know what was considered "a reasonable time" for pre-trial detention in Mauritius and the criteria for denying bail. It was also unclear for what length of time a prisoner could be kept in segregation.

36. Mr. KRETZMER asked about procedures for examining complaints of police brutality and whether independent investigators were available. With regard to freedom of speech, he was sympathetic to the need to approach carefully the delicate relations between ethnic groups, but outlawing works of art could cause even greater problems. He would welcome more information on the exact legal structure for banning a work, whether there was a hearing or a judicial review and the attitude of the courts towards such cases. In that same vein, he asked for further information on current Government policy and progress made towards the liberalization of the electronic media.

37. Mr. BUERGENTHAL said that the penalties for aggravated prison default appeared to him to be quite heavy, and he wondered whether there were any provisions for appeal to a judicial body. He had also received reports that under a proposed Constitutional amendment, suspected drug traffickers could be detained indefinitely. If that was indeed the case, he would welcome more information about the relationship of that amendment to the Dangerous Drug Act.

38. Ms. MEDINA QUIROGA asked whether, under the Dangerous Drug Act, a suspect could be deprived of the right to consult a lawyer for a period of 36 hours

after arrest. With regard to article 10 of the Covenant, clarification was needed on what sort of force could be used to maintain order. Referring to article 11 of the Covenant, he said that it was unclear to her whether imprisonment for debt still existed in Mauritius. The discussion of paragraph 3 (c) of article 14 in the report stated that there was no time-limit on the initiation of criminal proceedings; she would like to know why.

39. With regard to the Public Gathering Act, mentioned in connection with article 21 of the Covenant, she would like to know whether the Commissioner of Police was required to follow established guidelines in reaching a decision to prohibit a public gathering. Further information was needed on the penalties imposed for publishing false news; in her view, a criminal response was disproportionate to the offence.

40. Mr. MAVROMMATIS asked, in connection with article 5 of the Covenant, about the practice regarding treaties devolving to the Government of Mauritius through State succession. He inquired about the reasons for the delay in bringing domestic legislation in Mauritius into compatibility with article 11 of the Covenant, and when the passage of the amendment to the Civil Code eliminating criminal penalties for debt was expected to be passed.

41. Freedom of expression and a free press were the quintessence of democracy. The problem of the publication of "false news" could best be addressed through a self-enforced code of conduct for journalists and not through criminal sanctions.

42. Ms. EVATT joined with Mr. Kretzmer in asking about the criteria used in the decision to ban The Rape of Sita and about the possibility of appeal. Although she understood the argument that the work could be considered offensive by some Hindus, it seemed to her that the underlying issue was the book's subject matter, sexual violence and the rights of women. Thus, she would welcome more details on the extent of domestic violence in Mauritius, what preventive and corrective measures the Government had taken in that area and the extent to which the women's movement saw domestic violence as a problem.

43. Turning to the question of pre-trial detention, article 5, paragraph 1 (k) of the Constitution conferred extensive powers on the Commissioner of Police to hold suspects. She would like to know how "reasonable suspicion" was established, how long a person so detained could be held, whether such detention was subject to court review and why it was necessary.

44. She asked whether the Trade Unions and Labour Relations Bill would cover the situation in the export protection zone. The majority of workers in that zone were women, who were subject to coercion by their employers not to join trade unions.

45. Mr. BÁN shared the concerns of previous speakers regarding the grounds for denial of release on bail, mentioned in the report in the section on article 9. Specifically, the Bail Act 1989 provided that a detainee was not entitled to be released on bail where his continued detention was necessary for the protection of any likely witness. While it was important to protect witnesses, the provision was too broad and not fully compatible with article 9 of the Covenant.

46. Given that Mauritius was a country with a multilingual population, it would be interesting to learn whether interpreters were provided free of cost during court proceedings and how the quality of interpretation was controlled. Finally, he asked that the delegation comment on revised section 283 of the Criminal Code which related to the offence of sedition, as he believed it went beyond the scope of article 20 of the Covenant.

47. Mr. KLEIN reiterated the concerns expressed by previous speakers regarding the offence of publishing false news under section 299 of the Criminal Code. The restrictions set forth in paragraph 3 of article 19 of the Covenant should apply to the publication of false news. It would be interesting to hear more of the delegation's views on the publishing of false news as it related to the right to freedom of expression.

48. Mr. POCAR said, with regard to article 15, specifically the retroactivity of criminal law and the adoption of lighter penalties, that in its second periodic report, the reporting State had informed the Committee that criminal law was not applied retroactively, but that there was no provision for decreasing penalties. While it was encouraging to see that the application of the death penalty had been suspended, there appeared to be no general provision to indicate fuller compliance with article 15 of the Covenant and he wondered whether the authorities in Mauritius had considered adopting such a provision.

49. He also inquired as to what would occur under the Public Gathering Act 1991, which provided that the Commissioner of Police must authorize public meetings and public processions, in a case where a police commissioner did not take action upon a request. He asked whether it was possible for the matter to be referred to the courts and to what extent the conditions imposed by the police commissioner for holding such a meeting could be reviewed. With regard to unlawful assembly, it would be interesting to learn if there had been any decision by the judiciary as to how a breach of the peace referred to in paragraph 1.4 in the section on article 21 was to be interpreted.

50. Mr. ANDO, making reference to paragraph 3.1 under the section on article 19 in which the report mentioned that journalists had been prosecuted for contempt of court for criticizing certain judges of the Supreme Court, sought clarification about the procedure for applying the concept of contempt of court and the courts that enforced that penalty. He said that the Committee had received information from the International Labour Organization (ILO) regarding trade unions and labour relations which had revealed that Mauritius had been slow to adopt ILO model treaties in those areas. He asked that the delegation provide some explanation for the low level of incorporation of ILO model treaties in Mauritian legislation.

51. Mr. BHAGWATI said that the provision in the Constitution which gave the Government the power to extend the appointment of a Chief Justice for up to four years after his term had expired should be deleted in the interest of preserving judiciary independence. He sought clarification about whether there was a legal aid act in force in the country or whether it was merely up to the discretion of the courts to appoint legal counsel for an indigent defendant or party involved in a civil suit. He also asked whether prisoners were guaranteed the right to legal aid and the right to communicate with a lawyer while in detention.

52. With regard to article 19 and the right to freedom of expression, he wondered whether Mauritius had adopted a freedom of information act to complement the protection of rights under the Constitution, since many other countries had done so with good results. In cases where works of art or books were banned by the Government or other authority, he inquired whether there was a right to judicial review. Referring to article 20 of the Covenant, he noted that the Criminal Code prohibited instigation of war against the State or of civil war, yet he wondered whether there was any general provision or law prohibiting propaganda inciting war. With regard to paragraph 2.2 under the section on article 19, in which the report stated that an ex-Minister was attacking the ex-Chief Justice because the latter had allowed his son to appear before him in cases in the Supreme Court, he inquired whether prosecution had been based solely on the charge of publishing false news.

53. In paragraph 1.3 under the section on article 21 the report stated that a police officer had the power to interrupt a public gathering if he believed that the continuance of the gathering was prejudicial to public safety or public order. In such cases, it was necessary to specify the rank of police officer since it would be wrong to give that power to all police officers. The requirement to give written notice within less than seven days before the day of holding a meeting or procession was too restrictive, as it was sometimes necessary to hold a public meeting at short notice. Finally, in section 5 (1) (k), the Constitution provided that no person was to be deprived of his personal liberty unless authorized by law upon reasonable suspicion of his having engaged in activities likely to cause a serious threat to public safety or public order. The reference to "reasonable suspicion" conferred too broad a power on the authorities and should be changed to "reasonable belief".

54. Mr. BRUNI CELLI wished to focus his remarks on the responsibility of the State party to implement the Covenant. At the conclusion of the review of its second periodic report, the delegation of Mauritius had stated that there was no need for special provisions in the body of laws or Constitution to implement the Covenant. However, if there was no specific disposition recognizing a right consecrated in the Covenant, he wondered how that right was to be guaranteed. For example, under the section on article 3 in paragraphs 4.3 and 4.4, the report mentioned that amendments would be made to remove any discrimination against women. He wondered whether the implication was that prior to those amendments, women's rights had not been protected in Mauritius. The core document (HRI/CORE/Add.60) stated in paragraph 12 that the provisions of the Covenant were of a persuasive character but not directly enforceable by the courts. Therefore, he inquired whether the provisions of the Covenant merely served as guidelines or whether the State was obligated by law to respect the Covenant.

55. Lord COLVILLE endorsed the comments of Ms. Evatt regarding section 5 (1) (k) of the Constitution and sought clarification with regard to section 5 (4) (a), under which a person who had been detained could be held for up to seven days before being charged. Paragraph 2.2 of the section on article 9 made reference to the practice of entering provisional information when a suspect was arrested or brought into custody. He inquired as to what was the basis for a system of "provisional information".

56. With regard to article 13, he asked the delegation to explain how aliens' claims for asylum and cases in which it was decided that they should be deported were handled. If the relevant decisions were taken by ministers, he wondered whether they were subject to judicial review in the courts and if so, did the ministers have to provide reasons in support of their decisions. Finally, with regard to article 14 and the right to silence which was guaranteed by the Covenant, he asked the delegation to explain what inferences the court was allowed to draw from a defendant's failure to testify at the trial or from his refusal to give information during a police interrogation.

57. Lastly, he noted from paragraph 3.5 of the revised third periodic report that the Ombudsman was competent to investigate complaints about the actions of Government officers or authorities. It would be useful to know whether mechanisms were in place for the implementation of the Ombudsman's recommendations if the complaints were found to be justified.

58. Mr. SEETHULSINGH, replying to the supplementary questions put by members of the Committee, said that, while State prisoners were required to perform certain tasks with a view to acquiring skills, there was no system of forced labour as such.

59. The concept of aggravated prison default was defined in the Prisons Regulations as an act of mutiny or incitement to mutiny, assault by a prisoner, escaping from prison, misconduct or insubordination, or a malicious act against a prison official. Procedures were in place for the punishment of prisoners found guilty of such acts.

60. On the question of bail for accused persons, as in many other countries, the decision whether to grant bail depended on the seriousness of the offence notwithstanding the presumption of the innocence of the accused.

61. Referring to the question raised by Mrs. Chanet, he said that there were certain parallels between the Megadama case and a similar one in the United Kingdom in which the Minister of Home Affairs had been found guilty of contempt of court for ordering the deportation of a party while the latter's case was still before the court. In the Megadama case, however, the application to the court had been based on a forged affidavit.

62. The removal from circulation of the books The Rape of Sita and The Satanic Verses could not be construed as a formal ban in the sense of an order by the Director of Public Prosecutions. Instead the prohibition had been the de facto result of a declaration to that effect by the former Prime Minister of Mauritius.

63. The Government had established a mechanism to combat police brutality by prosecuting the policemen involved. In addition, applicants to join the police force were being carefully screened by the Police Service Commission and, even though it was difficult to prevent all acts of police brutality, steps were taken to investigate all such allegations. Pending the establishment of an independent police complaints board, the Ombudsman was competent to investigate complaints against the police.

64. With regard to the liberalization of the regime governing television broadcasts, some preliminary work had already been done and a new body would be set up later in 1996 to ensure that the programme content of any new stations would not be dominated by foreign video clips and cartoons and that programmes reflecting the national culture would be given adequate coverage.

65. There was no truth to the allegation that persons accused of drug trafficking were detained indefinitely. Suspects were brought to trial as soon as possible. Drug trafficking, however, must be recognized for what it was - the bane of the modern world, and harsh punishments must be reserved for those found guilty of that offence.

66. Concern had been expressed about the legal provision for the detention incommunicado of persons accused of drug trafficking. A revised Dangerous Drugs Act, which contained that provision, had indeed been passed in 1995, although its provisions were not yet in force and might be subject to review. He would inform the Committee of any amendments to the Act following the proposed review. The reality of the situation, however, was that drug couriers would have the opportunity to warn their accomplices if they were allowed to communicate with third parties immediately after their arrest. The freedom of such individuals must therefore be balanced against the need to combat the scourge of drug trafficking in a small developing country. There had been persistent reports, moreover, that certain attorneys were aiding and abetting accused drug traffickers, thereby further complicating the task of the authorities.

67. On the question of the imprisonment of debtors, he acknowledged that the practice in Mauritius was not consistent with the provisions of article 11 of the Covenant. Debtors who were unable to fulfil their contractual obligations could be sentenced to a term of up to 12 months by the Supreme Court and up to three months by a district court. He was unaware of how other countries dealt with that kind of problem, but there were many persons in Mauritius who abused the system by contracting large debts and then refusing to pay.

68. On the question of lengthy delays in the initiation of criminal proceedings, Mauritius followed British jurisprudence, which contained no provision for the prescriptibility of offences. While it was difficult to gather and produce evidence after lengthy delays, the right of a person not to be charged with an offence after an unreasonable lapse of time must be balanced against the right of a society to seek justice.

69. Under the Public Gathering Act of 1991, the Commissioner of Police had the power to prohibit public gatherings. While the requirement of seven days notice might seem onerous, in practice, persons who were denied permission to organize a public gathering could appeal to the courts. Such appeals were usually heard within 24 hours and therefore the current system could not be construed as a restriction on the freedom of assembly and expression.

70. The Criminal Code provided for offences such as "publishing false news" and "libel" to curtail any abuse on the part of the press. It was important, for example, to protect the independence and reputation of the judiciary from scurrilous allegations in the press. The punishment for such offences must also be proportionate to the enormous damage caused. Many newspapers knowingly

published false news and then closed down their operations if they were sued. Indeed, at one stage, the Government had required newspapers to lodge a substantial deposit as a guarantee of payment of libel awards against them by the courts, but the practice had been deemed to be unfair and had been discontinued.

71. Responding to Ms. Evatt's concerns about domestic violence and, in particular, spousal murder, he acknowledged that domestic violence did occur in Mauritius, although cases of spousal murder were very rare. Steps were being taken to address the problem and the Government would shortly enact legislation on domestic violence.

72. The creole dialect was commonly used in courts and interpreters were provided if accused persons could not understand the proceedings. As a result of a case in which the conviction of an Indian drug courier had been set aside on appeal because he claimed that he had been unable to understand the proceedings, court officials now satisfied themselves before a trial began that accused persons understood the language of the court.

73. In keeping with article 15 of the Covenant, persons under sentence of death would have their sentences commuted to imprisonment when the 1995 abolition of the death penalty act came into force.

The meeting rose at 6.05 p.m.

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HUMAN RIGHTS COMMITTEE

Fifty-sixth session

SUMMARY RECORD OF THE 1478th MEETING

Held at Headquarters, New York,
on Wednesday, 20 March 1996, at 10 a.m.

Chairman: Mr. AGUILAR

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of Mauritius (continued) (CCPR/C/64/Add.12* and HRI/CORE/1/Add.60)

Right to life, treatment of prisoners and other detainees, liberty and security of the person and right to a fair trial (arts. 6, 7, 9, 10 and 14 of the Covenant) (section II of the list of issues) (continued)

Freedom of conscience, religion, expression, assembly and association (arts. 18, 19, 21 and 22 of the Covenant) (section III of the list of issues) (continued)

1. At the invitation of the Chairman, Mr. Peeroo and Mr. Seethulsingh (Mauritius) took places at the Committee table.

2. Mr. SEETHULSINGH (Mauritius) said that Mauritius used the common law definition of breach of the peace that pertained in English law. Broadly speaking, breaches of the peace involved threats to public order or safety and could be committed against an individual as well as a group. Breach of the peace was not considered a serious offence, and was usually remedied by binding an individual over to appear in court and requiring him to provide security. Likewise, contempt of court was a comparatively rare offence which only applied when deliberate attempts had been made to undermine respect for the judiciary. A recent and clear-cut case of contempt had involved a newspaper editor not bothering to check his facts before making allegations about favouritism on the part of the Chief Justice.

3. Regarding the granting of government contracts to judges, he agreed that justice should be seen to be above suspicion and the new Government was seeking to discontinue the practice. Convicted persons were allowed to take advantage of legal aid when appealing to higher courts, but such aid was not usually provided when a case passed from the Supreme Court to the Judicial Committee of the Privy Council. On the question of permission for public gatherings, he explained that the police did not necessarily require seven days' notice.

4. He reiterated that the Constitution was the supreme law of Mauritius and explained that, although there were certain instances in which the provisions of the Covenant were not fully reflected in the Constitution, the Mauritian Government was gradually seeking to match the provisions of both instruments, as evidenced by the abolition of the death penalty and the amendments to section 16 of the Constitution.

5. Turning to the power of the Commissioner of Police to detain individuals indefinitely, he said that suspects had to be brought before a court every week or every fortnight. Their detention was therefore subject to the supervision of the courts rather than that of the police. Such cases were normally referred to the Director of Public Prosecutions, who decided, usually within two or three

months, whether formal charges should be brought. At the same time there was nothing to prevent a detainee from being freed on bail during that period.

6. There had been no recent requests for asylum, and any decision to deport an individual taken by the Minister for Foreign Affairs had to be approved by a lower court. If that court upheld the Minister's decision, the deportee still had a final right of appeal to the Supreme Court.

7. With regard to the right to silence, the Mauritian authorities had not followed recent British practice, which allowed adverse inferences to be drawn from silence. Cases referred to the Ombudsman did not entail an automatic right to compensation; if an individual felt that his rights had been violated, he had to seek compensation through the courts in the normal manner. However, there was always the possibility of making out-of-court settlements.

8. With reference to the recent case in which a political organization had contested the amount by which electoral deposits had been raised, the Supreme Court had decided that the size of the increase would prevent people from standing for election and was therefore unconstitutional. The Government had originally amended the law to stop people from standing for frivolous reasons and obtaining large amounts of air time in exchange for a very modest deposit. In the wake of the Supreme Court ruling, electoral deposits had reverted to the previous amount of 250 rupees.

9. Finally, he informed the Committee that Mauritius had dropped its reservations to articles 11 and 16 of the Convention on the Elimination of All Forms of Discrimination against Women.

10. Mr. PEEROO (Mauritius) said that Mauritius had ratified practically all the Conventions of the International Labour Organization (ILO) pertaining to fundamental rights and freedoms. The Mauritian authorities still had some reservations concerning Conventions Nos. 48, 87, 100 and 111, and were awaiting further guidance from ILO. Convention No. 125 had already been incorporated into Mauritian legislation through an amendment.

11. Lord COLVILLE said that the delegation had failed to deal with the issue of detention for seven days without charge arising out of sections 15 (1) (k) and (4) (a) of the Constitution of Mauritius. The wording of the statute was in itself vague and required explanation owing to its exceptional nature.

12. Ms. EVATT asked for further clarification regarding the book The Rape of Sita. Although no legal proceedings had been initiated and the book had not been formally banned, it nevertheless seemed that steps had been taken to make it unavailable.

13. Mr. BUERGENTHAL said that his question regarding a prisoner's right to appeal against aggravated prison default had still not been answered.

14. Mr. SEETHULSINGH (Mauritius) said that the provisions contained in section 15 of the Constitution were truly exceptional and were very rarely applied. Moreover, the rest of subsection (4) provided extensive safeguards for detainees in such situations.

15. Regarding the book The Rape of Sita, he confirmed that it had never been formally banned. Legal proceedings had been judged inadvisable because it would be extremely difficult to prove that the author had deliberately tried to stir up religious hatred. However, the Prime Minister had strongly recommended that the book should not be placed on sale since it was demonstrably an affront to religious sensibilities and would therefore cause social disruption. However, the Prime Minister's recommendation did not actually prevent anyone from reading the book.

16. With reference to aggravated prison default, he confirmed that the prison disciplinary board dealing with such cases was subject to review.

17. Mr. PEEROO (Mauritius) said that wide publicity had been given in Mauritius to the Covenant and the work of the Human Rights Committee. He had been interviewed by a newspaper which subsequently published a wide-ranging editorial on the topic of human rights. Finally, the Prime Minister had firmly committed his Government to the protection of human rights and the need to develop a nationwide moral stature capable of contributing at both the regional and the international level to the promotion of human rights and democracy.

18. Mr. BHAGWATI commended the Mauritian delegation for the frank and outspoken manner in which it had conducted its dialogue with the Committee, which spoke highly of the Government's respect of human rights. There were, however, certain disquieting aspects in respect of the human rights situation in Mauritius. Concerning the security of tenure and irremovability of judges, the fact that the Government could renew a judge's contract at its discretion was a source of some concern regarding the independence of the judiciary. He wondered whether the Government might not tend to offer extended contracts to those judges whose decisions had been favourable to the Government. He welcomed the news that the new Government was considering amending the Constitution to rectify that situation.

19. He would welcome further information regarding any legislation in force on the subject of the provision of legal aid services to citizens who could not afford to pay for the services of a lawyer. Legal aid should be a matter of right. As for protection against discrimination, the provision of the Constitution whereby such protection did not extend to persons who were not citizens of Mauritius was not in conformity with article 26 of the Covenant; he was glad to learn that the Government intended to review the situation in that respect. The Government should also take steps to disseminate to the public and particularly to human rights organizations the contents of the report before it was submitted to the Committee, as well as the comments of the Committee. He also proposed that arrangements should be made in Mauritius for legal aid lawyers to visit jails periodically to provide legal advice and, when necessary, legal representation to detainees. Detainees' correspondence should be free and unfettered, and where it was addressed to lawyers or to the courts, it should be uncensored. The report had also failed to make it clear in what circumstances detainees could be subjected to solitary confinement or be handcuffed; such forms of treatment were acceptable only in very exceptional circumstances, and those circumstances should be clearly defined in the country's legislation.

20. He urged the Government to introduce a freedom of information act, in line with article 19 of the Covenant. Regarding the seven days' notice required for public gatherings, he was glad to learn that that period was not inexorable and could in certain circumstances be reduced or dispensed with. The provision whereby persons detained under the Dangerous Drugs Act could be held for 36 hours without access to a lawyer needed to be reviewed. He would also welcome further information as to whether there was any provision for compensation for persons whose fundamental rights had been violated.

21. Mr. KRETZMER welcomed the full and frank replies that the representatives of Mauritius had given to the Committee's questions. The Government was clearly making serious efforts to make progress in meeting the requirements of the Covenant: examples of this were the abolition of the death penalty and the constitutional amendment concerning discrimination on the grounds of gender. He hoped that the current exchanges between the Committee and the Government would assist the latter in making continued progress towards full compliance with the provisions of the Covenant. However, he expressed some concern that the area of personal law was treated as an exception to the constitutional protections against discrimination; that exception should be reconsidered. He would also welcome, in a future report, full details regarding legislation to outlaw discrimination in the private sphere.

22. Regarding pre-trial detention, the current grounds for such detention, solely on the basis of the seriousness of the offence, were not consistent with the provisions of the Covenant. He welcomed the Government's statement that it planned to establish a police complaints board, and hoped that that board would be provided with sufficient resources.

23. Regarding the provisions of article 19 of the Covenant, the legislation providing for the criminal offence of disseminating false news should be reconsidered; it would be preferable for that criminal offence to be abolished, since it constituted a serious interference with the freedom of the press. The matter of the most serious concern was the information provided to the Committee regarding restrictions on the publication of books and films. The fact that a particular book which had been referred to in the Committee had been banned without the existence of any legal basis for such a ban was even more disquieting. He recalled that article 19, paragraph 3, of the Covenant provided that any restrictions on freedom of expression could only be such as were provided by law. He therefore requested the Government to reconsider the whole issue of such restrictions; if it was necessary that they should continue to exist, then appropriate legislation should be drawn up to provide a clear definition of the conditions in which they would be applied.

24. Mr. PRADO VALLEJO thanked the representatives of Mauritius for the replies that they had provided and for their efforts to conduct a positive dialogue with the Committee. Positive progress had clearly been made, demonstrating the Government's determination to improve the situation of human rights in Mauritius. There were however certain areas of concern such as the numerous instances of torture and ill-treatment of detainees by the police. New measures and mechanisms were required to overcome that problem, including thorough investigation, punishment of the perpetrators and compensation for the victims. Continued impunity would only lead to a worsening of the situation. A major

effort should be made to provide human rights instruction to the police. He was also preoccupied by the limits on freedom of expression which had been previously mentioned. It was clear that there could be no democracy without freedom of information. There was an urgent need for reforms to bring the domestic legislation of Mauritius in line with the rights set out in the Covenant, particularly in article 19.

25. Mrs. CHANET commended the Government of Mauritius for the progress that had been achieved, particularly in respect of the abolition of the death penalty. There were, however, some questions that remained to be answered, and she hoped that further progress would be achieved. The role of the Covenant in Mauritian law was a matter for concern, as was frequently the case in those countries where the Covenant was not self-executing and could therefore not be invoked directly in the courts. The Constitution of Mauritius contained derogations to certain articles of the Covenant; the consequent conflicts between the terms of the Covenant and the Constitution was a matter which required the Government's attention. One example was the fact that the inhabitants of certain small islands were deprived of the right to vote, which was in contradiction with the terms of article 25 of the Covenant, and the practice of imprisonment for civil debt was contrary to the terms of article 11. The gravity of the offence as the sole criterion for pre-trial detention required change in order to conform to articles 9 and 14. Reform was also required in order to avoid a recurrence of the situation in which a person could be expelled from the country while his appeal against the expulsion was still pending. She also concurred with the remarks of other members of the Committee on the subject of censorship.

26. Mr. MAVROMMATIS commended the new Government's commitment to re-examining the human rights situation and to making changes wherever necessary. One area requiring careful consideration was that of grounds of discrimination other than gender; although freedom of religion existed in Mauritius, that did not mean that discrimination on the grounds of religion should not be taken into account. It was also important to review the law of criminal libel and the law whereby disseminating false news was a criminal offence; both of those laws in their current form were anachronistic. He suggested that it would be useful to replace the current measures by establishing a press complaints commission. It was also inappropriate that the judiciary and its reputation should be protected by means of the law of contempt of court.

27. On the question of language, he urged the Government to ensure that teaching materials and other literature were made available in the vernacular languages. He also supported the suggestions of other members of the Committee regarding imprisonment for debt, and legal aid.

28. Mr. BUERGENTHAL congratulated the Government for its admirable human rights record and for the enviable climate of peace and harmony existing in such a multi-ethnic and multicultural society. There was, however, still room for improvement, and he expressed support for the remarks and suggestions made by the other members of the Committee. He also expressed concern on the subject of the power of the chief of police to issue permits for public meetings. There seemed to be no statutory basis on which the authorities could be compelled to issue such a permit; it was important that the enjoyment of human rights should not depend on the goodwill of the public authorities.

29. Ms. EVATT commended the Mauritian delegation for the information which they had provided in response to the Committee's questions. It was clear that the rule of law was held in high esteem in Mauritius. She congratulated the Government for the positive developments which had taken place, such as the abolition of the death penalty and the introduction of a police complaints board. She also commended the approach of the Mauritian courts to the question of extradition in cases where there was a danger of torture.

30. There were still some matters of concern, including the fact that the report had been provided late and that the Mauritian delegation had failed to follow up on certain questions which had been asked at the time of the Committee's examination of the previous report, and she hoped that that would be borne in mind when Mauritius presented its next report. There were still a number of outdated and inappropriate laws and attitudes, including excessive powers of detention. On the subject of censorship and of grounds of discrimination, she expressed agreement with the remarks of her colleagues. There was a need for anti-discrimination laws which would cover both the public and private sectors in areas such as education and employment. While the equal opportunities commission was welcome, there was a need for affirmative action programmes as an essential part of the necessary changes. The provision for personal laws in the Constitution was not appropriate and would tend to reinforce outdated traditional attitudes in areas where the requirements of equality must be given priority. She commended the Government for having withdrawn its reservations to the Convention on the Elimination of All Forms of Discrimination against Women, and welcomed the new initiatives in respect of domestic violence. It was clear that considerable attention was being given to law reform and to compliance with the provisions of the Covenant, and she hoped that that would continue.

31. Mr. POCAR said that while there had been notable improvements in the human rights situation since the previous report, as exemplified by the abolition of the death penalty, some concerns remained. In some cases the protection of human rights seemed to be based on the practice and goodwill of the administration rather than legal guarantees, and in some areas the Constitution was not in accordance with the Covenant. Although there had been movement towards lighter penalties, other provisions in that vein would be welcome.

32. Mr. EL-SHAFEI agreed that there had been identifiable improvements, for example, the abolition of the death penalty and legislative action to counter discrimination. However, the Committee had made a number of observations regarding statutory law in Mauritius, which should be duly taken into account by the authorities. In addition, some indication of whether the rights protected under the Covenant had been encroached upon during periods of emergency would be welcome. The attempts made by the Government of Mauritius to accommodate the disparate needs of a multi-ethnic and multicultural society were commendable, and worthy of emulation by others.

33. Mr. BÁN said that there had been a positive dialogue with the delegation, from which it was clear that Mauritius had made great progress in protecting the rights enshrined in the Covenant, for example, in terms of gender equality and in the area of citizenship. He welcomed the measures being taken by the Government to promote compliance with the Covenant and with reporting

obligations. Nevertheless there were areas of concern, in particular in respect of article 19. It was, for example, strange that in a democratic society there should be stringent restrictions on freedom of expression, which should be reconsidered.

34. Mr. BRUNI CELLI agreed that while there had been advances, areas of concern remained. In particular, given that the Covenant as such had an indicative status only in Mauritius, and given that Mauritius had ratified the Covenant more than 20 years earlier, the lack of domestic legislation in respect of articles 3, 19 and 25 was disquieting. While article 2 of the Covenant did not prescribe a time-limit for the adoption of legislative measures to give effect to the rights recognized therein, it was to be understood that such legislation should be adopted as quickly as possible following ratification.

35. Mr. ANDO said that although Mauritius had a good record in the field of human rights, he still had some concerns. With respect to personal status, although it was difficult to apply a uniform standard in a multi-ethnic society with varying traditions, that was essentially the aim of international instruments to protect human rights, and a greater effort needed to be made in that regard. As for freedom of expression, it was often the case that de facto limits were more negative than legal restrictions; the Government should address that area. The third area of concern was the failure to apply the provisions of a number of International Labour Organization conventions, which would assume greater relevance as the country's economy became more diversified and workers' rights came more to the fore.

36. Mr. KLEIN said that there were two issues of particular importance to him: gender equality and freedom of expression. The former had been addressed in constitutional changes and consequent legislation, but the situation of freedom of expression remained unsatisfactory. In particular, the prohibition on books and films and other vehicles of expression and the legislation governing the publication of false news were disquieting. Article 19 of the Covenant gave clear guidelines in that respect. A fundamental issue was whether the publication of false news as such should be prohibited at all. Nevertheless, Mauritius was moving in the right direction, and it was clear that there was genuine respect for human rights.

37. Mr. FRANCIS associated himself with the concerns expressed by other members of the Committee. He welcomed the abolition of the death penalty and the steps being taken by the authorities to ensure the independence of the judiciary and to harmonize Mauritian legislation with the Covenant.

38. The CHAIRMAN welcomed the forthright and fruitful dialogue with the delegation, but noted that various concerns had been raised. In particular the lacunae in the application of the Covenant's provisions were disquieting. For example, it appeared that the courts had noted discrepancies between Mauritian legislation and the Covenant but were powerless to act. A second area of concern was freedom of expression: there was de facto censorship with the prohibition of certain literary works, and the legislation on false news was anachronistic. Further, notwithstanding the success of Mauritius as a multicultural and multi-ethnic society, areas of discrimination remained. He welcomed the abolition of the death penalty, and expressed the hope that the

Government would seek to ratify the Second Optional Protocol. There were, however, many good things with respect to human rights in Mauritius, which was one of the few countries to have declared peace on the world.

39. Mr. PEEROO (Mauritius) welcomed the fruitful dialogue with the Committee, and said that the Government would make every effort to comply with the requirements of the Covenant and to take account of the points raised by the Committee.

40. Mr. Peeroo and Mr. Seethulsingh (Mauritius) withdrew.

The meeting was suspended at 12.15 p.m. and resumed at 12.30 p.m.

ORGANIZATIONAL AND OTHER MATTERS (continued)

Lists of issues to be taken up in connection with the consideration of reports submitted by States parties under article 40 of the Covenant (continued)
Initial report of Nigeria (CCPR/C/92/Add.1)

41. The CHAIRMAN recalled that Nigeria had submitted an initial report - overdue since October 1994 - in response to a decision the Committee had taken under rule 66 of its rules of procedure, requesting it to report in particular on articles 6, 7, 9 and 14 of the Covenant and expressing its deep concern over recent executions after trials not in conformity with the Covenant.

42. Mr. KRETZMER, supported by Ms. EVATT, the CHAIRMAN, speaking in his personal capacity, Mr. BRUNI CELLI and Mr. BUERGENTHAL, proposed that, since concern over the executions, of Ken Saro Wiwa and other members of his Ogoni movement had prompted the Committee to request a report, its concern should be reflected in the presentation of the list of issues. The list should be subdivided, and the issues relevant to those events and to the articles cited should be put first.

43. The CHAIRMAN pointed out that, at Nigeria's insistence, its report would be considered on only a single day rather than the usual two. Since the important issue involved required time, consideration of part of the report might have to be carried over to the Committee's July session in Geneva.

44. Ms. EVATT said that there would be many benefits to having the Committee issue its concluding comments on Nigeria at the current session, so as to publish them at the earliest possible time, especially in view of the fact that the Commission on Human Rights was also currently in session.

45. Lord COLVILLE observed that a special tribunal in Rivers state, Nigeria, which was technically in recess at the moment, was waiting to try three more persons. It would therefore be very valuable if a way were devised to publish concluding comments - or at least a part of them - at the current session. The delegation would also have to be restrained from spinning out its answers to less urgent questions.

46. Mr. KRETZMER, supported by Mr. ANDO, Ms. MEDINA QUIROGA, Mr. POCAR, Mr. BHAGWATI, Mr. BÁN and Mr. KLEIN, proposed dividing the list of issues into

two sections. Since the delegation must not be allowed any opportunity for a filibuster, he proposed avoiding issue (a), dealing with the general constitutional and legal framework, at the outset, and instead moving immediately to the key issues and articles in the first section.

47. It was so decided.

48. Mr. LALLAH proposed that, as suggested, the list should be divided into two sections. After the delegation had responded to the key issues in the first section, the Committee could put further questions, and nothing precluded it from then adopting concluding comments that would be final, on that section alone. A filibuster would thus be avoided, and the remainder of the list of issues could be dealt with at the July session.

49. It was so decided.

50. Mr. ANDO suggested deleting issue (h) and putting the question orally to the delegation.

51. It was so decided.

52. Ms. EVATT, supported by Mr. POCAR said that prominence should be given to the courts and their jurisdiction, and thus issues (l) and (f) should be addressed at the outset.

53. Lord COLVILLE said, with regard to issue (l), that the military courts were not necessarily the problem in Nigeria but rather "special tribunals" which were set up to try all sorts of cases, including military ones.

54. Ms. EVATT concurred, and suggested amending issue (l) to read:

> "Please describe the constitution, membership and jurisdiction of all special military courts and tribunals, and the law and procedure applied by them in criminal matters. Under what circumstances, if any, do military courts have jurisdiction over crimes allegedly committed by citizens or over civil crimes allegedly committed by military officials?"

55. The CHAIRMAN said that he took it the Committee wished to adopt issue (f), issue (l) as amended, and issues (g) and (j), as section I of the list of issues; and to adopt issues (a), (b), (c), (d), (e), (i), (m) and (n), as section II of the list.

56. It was so decided.

The meeting rose at 1.05 p.m.

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HUMAN RIGHTS COMMITTEE

Fifty-sixth session

SUMMARY RECORD OF THE 1479th MEETING

Held at Headquarters, New York,
on Wednesday, 20 March 1996, at 3 p.m.

Chairman: Mr. AGUILAR

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The meeting was called to order at 3.25 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Fourth periodic report of Spain (CCPR/C/95/Add.1; HRI/CORE/1/Add.2/Rev.2)

1. At the invitation of the Chairman, Mr. Ibarra, Mr. Zurita, Mr. Borrego and Mr. Rodriguez (Spain) took places at the Committee table.

2. Mr. IBARRA (Spain) said that the Spanish parliament had recently taken decisive steps to ensure fulfilment of the constitutional provisions calling for the establishment of an advanced democratic society. That society was to be based on respect for the Constitution and the Government would be obligated to create a favourable environment and remove the obstacles to the enjoyment of genuine freedom and equality by both individuals and groups. In implementation of those goals, the legislature had enacted a new Penal Code to replace the outmoded one, which had been last revised in 1973.

3. The new Code completely revamped the system of penalties, which were now geared towards the social rehabilitation of convicted persons. It also sought to achieve an appropriate balance between the principle of minimum intervention, which was justified by the obligation of the public authorities to protect human rights, particularly in an increasingly complex society. The new Code therefore provided penalties for new forms of criminal behaviour and attached special importance to the protection of fundamental rights. Finally, the new Code sought to promote genuine equality, as required by the Constitution, by establishing mechanisms for protection against any activity that was discriminatory or detrimental to freedom and equal treatment.

4. Other legislative measures had been adopted to establish human rights standards and to regulate Spain's policies in the field. The organic law of 15 January 1996 for the legal protection of minors had sought to identify and strengthen the fundamental rights enshrined in the Constitution, particularly those concerning social groups that needed special protection from the public authorities. The law took into account the constitutional mandate to ensure the social, economic and legal protection of minors as well as the provisions of the Convention on the Rights of the Child. Its two guiding principles were, firstly, its recognition of the supremacy of the interest of minors by promoting their integration into the family and society and by redressing situations that were prejudicial to their personal development, and, secondly, the attribution of responsibility to the public authorities for preventing and redressing situations which posed a risk to minors and ensuring that appropriate services in such areas as guardianship, adoption and custody were available to them.

5. The law of 11 December 1995 on assistance to victims of violent crimes and crimes against sexual freedom was intended to create a system of public assistance for the victims of such crimes. The financial assistance provided by the State to victims of violent crimes resulting in death or serious physical or psychological injury was not a substitute for the compensation for which the party guilty of the offence was liable. It merely represented an attempt by the

State to display solidarity with the victims of violent crimes. That principle of solidarity was also behind other forms of assistance, including material, physical or psychological help for victims and more considerate treatment of victims by the police and judicial authorities in order to protect their privacy and dignity.

6. For its part, the law of 10 January 1996 on free legal aid brought up to date the traditional entitlement of indigent citizens to the services of an attorney. The rights of all to equality before the law, legal protection and legal defence were now more effectively protected as a result of the creation of new mechanisms for free professional assistance for the most disadvantaged groups.

7. On the question of the death penalty, the Constitution of 1978 recognized the fundamental right of all to life and to physical and moral integrity and provided for the abolition of the death penalty, except as provided for by military criminal law in time of war. In keeping with the spirit and purpose of the Second Optional Protocol to the Covenant, the organic law of 27 November 1995 also abolished the death penalty provided for by military criminal law in time of war.

8. Parliament had also adopted positive measures to promote equality of the sexes, including subsidies to employers who recruited women in job sectors in which the latter were underrepresented, job training programmes, and the revision of educational material to combat sexual stereotypes. The Constitutional Court had upheld the constitutionality of the principle of affirmative action where justified, including measures to compensate for the traditional treatment of women as inferiors in the social sphere and in the labour market.

9. The right to education, which was provided under the Constitution for all Spaniards and foreigners resident in Spain, was another area in which the progress achieved in the fight against discrimination and inequality could be measured. Both the State and Autonomous Communities were competent to take action to ensure that the benefits of education were enjoyed by all citizens without distinction of any kind. The organic law of 3 October 1990 on the general organization of the educational system had laid down the guiding principles and basic standards for the adoption by educational authorities of affirmative measures to compensate for inequalities in education at the kindergarten, primary and secondary levels.

10. For its part, the organic law of 20 November 1995 on the participation, evaluation and administration of educational institutions had identified students with special needs, distinguishing between those whose special needs derived from disabilities and behavioural problems and those whose needs derived from deprived social or cultural environments. Special attention was paid to such groups and to students being schooled by distance learning methods for medical or other reasons.

Constitutional and legal framework within which the Covenant is implemented, state of emergency, non-discrimination, protection of the family and children, and rights of persons belonging to minorities (articles 2, 3, 4, 23, 24, 26 and 27 of the Covenant) (section I of the list of issues)

11. The CHAIRMAN read out section I of the list of issues under that heading as follows: (a) information on whether, in the period under consideration, there were any cases in which the provisions of the Covenant had been directly invoked in the courts or referred to in judicial decisions; (b) clarification of the procedures for the implementation of any views adopted by the Committee under the Optional Protocol; (c) information on the impact of the various measures referred to in paragraphs 21 and 22 of the report adopted to reinforce protection against racial discrimination in a context marked by the re-emergence of "such theories and behaviour" and clarification of whether the draft of the new Penal Code, which broadened the array of enforcement measures in those circumstances had already been adopted; (d) information on whether any specific measures had been taken to promote the access of women to political life and thus overcome their underrepresentation in that area (para. 18 of the report); (e) information on the difficulties which had impaired, and continued to impair, the functioning of the system of Autonomous Communities and on the steps that had been taken to try to overcome them (para. 7 of the report); (f) details of the practical measures taken to guarantee the effective exercise of the rights, pursuant to article 27 of the Covenant, of persons belonging to minorities; (g) information on the measures taken to disseminate information on the rights set forth in the Covenant and the Optional Protocol; (h) details of the extent to which the public had been informed of the consideration of the report of the Human Rights Committee.

12. Mr. BORREGO (Spain), referring to section I (a), said that the Covenant formed part and parcel of Spain's domestic law and its provisions had been directly invoked 144 times in decisions of the Supreme Court involving administrative disputes, labour and social law. Also, in recent years, Spain's Constitutional Court had directly invoked the Covenant in 61 of its rulings. It had also been invoked at the lower levels of the judicial system.

13. To cite specific examples: in 1993, the First Chamber of the Supreme Court had invoked article 14(5) of the Covenant in a civil case. Article 17 had been invoked in 1994 by the Second Chamber of the Supreme Court in a case in which a parent had revoked a gift to a daughter who had left home to live with a man of another race.

14. Turning to section I (b), he said that the Spanish Government took very seriously into account the views adopted by the Committee under the Optional Protocol. In case of a violation of the Covenant in the form of harm to an individual as the result of the normal operation of the administration of justice system, article 121 of the Constitution of Spain, which provided for compensation in such cases at State expense would come into play. If the violation occurred in another sphere, article 106(2) of the Constitution provided that private individuals were entitled to compensation for damages inflicted on their property or persons through the improper functioning of Spanish public services, except in cases of force majeure.

15. Mr. IBARRA, responding to the question in section I (c) on measures referred to in paragraphs 21 and 22 of the report to reinforce protection against racial discrimination, said that the measures announced in paragraphs 21 and 22 and planned for 1994 had become a reality. The Penal Code of 1995 introduced the notion of the violation of human rights and of freedoms guaranteed by the Constitution. Articles 510, 511 and 512 prohibited incitement to discrimination on the grounds of race, anti-Semitism, ideology, religion, beliefs, sex, sexual orientation, national origin, illness, or handicap as well as discrimination against or inflammatory statements about any groups or associations.

16. The Code also prohibited discrimination against any physical or legal person or persons and refusal to provide services by any public or private sector institution if such refusal was motivated by discrimination. The Code, in its chapter on crimes against freedom, article 170, included the crime of threats against any ethnic group. Chapter 10 on the right to privacy prohibited revealing details of any person's personal life without consent, or of his/her ideology, beliefs, religion, health, sex life or racial origin (art. 197, para. 5). Chapter 15, on worker's rights, in article 314 prohibited serious discrimination in the public or private workplace for reasons of ideology, religion, belief, ethnicity, race, nationality, sex, sexual orientation, family situation or handicap. Chapter 24 concerning crimes against the international community, besides genocide mentioned in article 307, paragraph 1, also included the dissemination by any means of ideas or doctrines which tended to deny or justify genocide or rehabilitate regimes or institutions which indulged in such practices (art. 707, para. 2). Chapter 1, article 22, case 4, also provided that the seriousness of a crime would be aggravated if it had been motivated by racism, anti-Semitism, discrimination on the basis of religion, belief, ethnicity, race, sex, sexual orientation, illness, or handicap.

17. The Penal Code of 1995 also reflected the situation in the European Union when, during the Spanish presidency in the second half of 1995, a proposal was put forward for common action to fight racism. The Ministers of the Interior of the European Union were meeting in Brussels to establish an agenda for arriving at a consensus on common action by the international legal community to cooperate in fighting racism and xenophobia.

18. The first aspect of that common action would be for each Government to enact laws condemning the five racist and xenophobic behaviours, namely, incitement to discrimination, violence or racial hatred, public apology motivated by racism or xenophobia for crimes against humanity as defined by the relevant international instruments, public rejection of article VI of the International Military Tribunal in the annex to the London Agreement of 1945 on racist or xenophobic grounds, the distribution of materials of a racist or xenophobic character, and participation in groups whose practices incited to discrimination or violence or religious, racial or ethnic hatred. Those behaviours would be regarded as crimes against humanity and, to avoid conflicts in jurisdiction, extradition would be facilitated in such cases.

19. As a second step, the countries of the European Union would improve legal cooperation, promote the international transfer of information on offences charged, facilitate the confiscation of racist or xenophobic materials, and

reinforce legal assistance among States. The five behaviours cited could not be dismissed as infractions or political crimes. An information network would be set up to assist in investigating and prosecuting the offenders.

20. Such measures would lead to further progress in the international fight against racist and xenophobic behaviour and that common action would be the first example of federal European legislation. The two measures he had described were the most representative of the work undertaken by Spain in that period.

21. Mr. ZURITA, responding to the question in section I (d) concerning the promotion of access of women to political life, pointed out that the greatest social change in Spain over the preceding 10 years had been the change in the status of women. Certainly, the international conferences on the status of women in Nairobi and Beijing had played an important role. In 1989 the first plan for the promotion of equal opportunity for women had been launched with the intention of implementing policies to promote the involvement of women in the public sector. From 1993 to 1995 a second plan had used the lessons learned during the application and development of the first plan, to further develop the role of women. Whereas the first plan had emphasized quantitative changes, the second emphasized qualitative changes to advance the role of women and to increase their participation in the cultural, political and working life of the country. The second plan had further advanced the participation of women in society and politics and promoted their access to decision-making positions. Although progress had certainly been gradual, it had been real and women were increasingly present in decision-making at the political, economic and social levels, nationally, locally and in the autonomous regions.

22. Until 1989, there had been very few women deputies in parliament but the legislative elections of 1989 had more than doubled the number from 23 to 51, or 14 per cent of the total, and in 1993 the number rose to 55 or 15.7 per cent of the total. The elections of 3 March 1996 had raised the total to 77 or 22 per cent.

23. In high-level government posts the number of women had risen to 12.9 per cent of the total in 1994, 5 per cent more than in 1990 and 8 per cent more than in 1985. Three ministers in the Cabinet were women - and there were five women Secretaries of State, representing a total of 13.9 per cent of all posts in the Government ministries.

24. Mr. IBARRA, referring to the question in section I (e) concerning the system of autonomous communities, stated that the territorial distribution of political power in Spain was based on two structures, the autonomous communities and local administrations. In 1995 the first organizational law had confirmed the autonomy of the city of Ceuta and the second organic law had confirmed the autonomy of the city of Melilla. The enactment of that law had completed the organization of political power in Spain into 17 autonomous communities and 2 autonomous cities and had concluded the process begun in 1979 with the granting of autonomous status to the Basque country and to Catalonia. Each community had participated in the process voluntarily by adopting statutes and organizational laws within the framework of the decentralization provided for by article VIII of the Constitution.

25. An important document reflecting the debates in the Senate on the status of the autonomous regions had been provided to the Committee and the President of the Government, summing up the facts concerning the process of decentralization, had said that over the preceding 15 years, the institutions of the autonomous regions had been consolidated, their responsibilities for the welfare of their citizens had been defined, and 1,200 transfer of power decrees had been promulgated and some 15,000 civil servants transferred. With the help of the constitutional court, the competencies of the various levels of Government had been delimited, resulting in a major reduction in tension. The problems created by so rapid a process of decentralization had been faced in a spirit of cooperation and the autonomous communities' share of public spending had gone from 3.5 per cent in 1984 to 25 per cent in 1993.

26. Further measures had been taken to develop the role of the autonomous communities in accordance with article 43 of the Constitution and to convert the Senate into the chamber of regional territorial representation in accordance with the findings of the General Commission on the Autonomous Territories. Finally, in 1995, 162 new transfers had been made from the State to the autonomous communities, double the number of transfers of powers made in 1993.

27. Referring to the question in section I (f) concerning measures guaranteeing the rights of minorities, he stated that the only minority in Spain, as defined in the Covenant, were the Gypsy people. Spain was a socially and culturally pluralistic society with many nationalities living in the autonomous territories. As a result of increased immigration, Spain for the first time had become a net importer of population.

28. The first problem concerning the Gypsy minority was to define who was a member since article 16 of the Constitution prohibited any reference to ethnicity in census-taking. Consequently, the only figures available were unofficial and put the Gypsy population at approximately 410,000 persons. A programme consisting of some 1,135 separate measures had been set up to integrate the Gypsy minority and there were some 32 Gypsy-related associations. A special Follow-up Commission and the Government's Consultative Committee had representatives from Gypsy organizations. Specific policies and measures had been generated by public administrations to promote the participation of Gypsies. Efforts had been made to improve their access to the workplace, to schooling and to keep Gypsy children in school for longer periods of time. Access to the health system and housing for Gypsy women had been improved. The Gypsy people themselves had been encouraged to participate in Gypsy-oriented associations and the public authorities had sought to promote a positive image and greater public awareness of Gypsy culture.

29. Those efforts had been strengthened by three other campaigns: Democracy and Equality, Youth against Intolerance, and the European Youth Campaign against Racism, Xenophobia, Anti-Semitism and Intolerance. Since 1995 the legal system had instituted special training for police services to promote greater awareness of cultural and ethnic groups. Measures had been implemented to compensate for inequalities in education, one of which expressly targeted the children of socially disadvantaged ethnic and cultural minorities.

30. Responding to the question in section I (g) concerning information on the Covenant and the Optional Protocol, Mr. Borrego stated that the rights embodied in the Covenant and the Protocol had been published in the Official Bulletin and were well known to all the parties concerned. They had been incorporated in Spanish legislation and a document on the question had been annexed to the report. Moreover, those rights were studied at all levels of both general and specialized education, within the framework of fundamental rights. In addition, special courses were available in law schools so that legal professionals would be fully aware of human rights and the participation rate in those courses was very high. Indeed, proof of awareness of human rights was the fact that they were often invoked before the courts and in appeals to the Human Rights Committee.

31. Concerning the question in section I (h), on public awareness of the report to the Human Rights Committee, he stated that the presence of a television crew and the fact that the report was receiving wide attention in the national media were proof that in Spain, where freedom of the press was a reality, the public was well informed of the proceedings of the Human Rights Committee.

32. Mr. POCAR said that Spain might be unique among States parties in that so many of its court decisions made direct reference to the Covenant. He would welcome additional information on Spanish jurisprudence: was the Covenant invoked when domestic law did not cover a particular situation or was it used to aid in interpreting domestic law?

33. Mr. PRADO VALLEJO commended the Government of Spain on the recent abolition of the death penalty. With regard to non-discrimination, he would like to learn what concrete measures had been taken to address the situation described in paragraphs 20, 21 and 22 of the report. While he commended the excellent efforts made to establish the system of Autonomous Communities, he would welcome more details on how the problems had actually been solved.

34. The independence of the judiciary was of fundamental importance to the protection of human rights, but the system of electing judges by a three-fifths majority of the parliament could introduce a political element into the process. He would like to know what was being done to ensure that the independence of the judiciary was preserved.

35. With reference to article 27 of the Covenant, more information was needed about the situation of linguistic or racial minorities in Spain and about access by the Gypsy minority to the courts and to Covenant protections.

36. Mr. BRUNI CELLI said that the new realities of the global economy had made Spain a destination country for immigration, and he would like to know whether there was a systematic Government policy on immigration. There had been reports of police brutality against immigrants; information was needed on measures to avoid such violence and whether the police officers involved had been punished. Any available statistics on the number of immigrants would be helpful in understanding the magnitude of the problem. Information regarding safeguards for immigrants in the area of salary and working conditions would also be helpful.

37. Ms. MEDINA QUIROGA, noting that most court cases in which the Covenant had been invoked directly had been heard before the Supreme Court, wondered about the status of the Covenant in the lower courts. She would like to learn more about the mechanisms for implementing follow-up to Committee views on communications received from individuals. She also asked whether non-governmental and human rights organizations had been invited to comment on or participate in the preparation of the report.

38. The penalties mentioned in paragraph 108 of the report for failure to pay child support should be clarified, as they appeared to be incompatible with the prohibition of imprisonment for inability to fulfil a contractual obligation under article 11 of the Covenant.

39. Mr. LALLAH said that it would be interesting to know whether the Committee's general comments and the Optional Protocols to the Covenant were also invoked before Spanish courts. He, too, would like to hear more about procedures for the implementation of Committee views on communications. The Government should elaborate on the current situation of the Basque separatist movement and its impact, if any, on the implementation of the Covenant.

40. Noting that paragraphs 21 and 22 of the report mentioned instances of discrimination on a number of grounds, including race and ethnic origin, he would be interested to learn what races had encountered such problems in Spain and the extent of those problems. The situation of the Basque people had not been dealt with in the report and he wondered if the delegation might discuss its views of the Basque problem.

41. Mr. KLEIN said that while the report highlighted legal instruments that could be used to combat the problems of xenophobia and racial discrimination, legal means, while necessary, were not sufficient. He asked specifically whether the Spanish Government had established any educational programmes in schools or universities or for civil servants.

42. With reference to paragraph 135 of the report, he inquired whether in cases where children were born out of wedlock, to single parents or couples living together, both natural parents had parental authority or if it was reserved for mothers only.

43. Mr. ANDO, referring to paragraph 21, said that the provision which stipulated that a criminal would receive a stiffer penalty if he committed an offence against an individual for reasons relating to the victim's ethnic or national origin could in itself be discriminatory vis-à-vis the perpetrator of the crime, and asked that the representative of Spain comment on that provision.

44. Ms. EVATT said that the report referred to a number of cases in which courts at all levels had made references to the Covenant. In future it would be ideal to include in the report both the decision and the relevance of the Covenant in making the decision.

45. While she acknowledged that there was greater equality for women in Spain than in the past, she asked whether the Government had devised any practical measures to encourage greater participation of women in political life.

46. She agreed with previous speakers that legislation was not enough to combat problems of racial discrimination and would also be interested in learning if the Government had established any programmes to sensitize people against intolerance, xenophobia and racial discrimination.

47. Finally, she inquired as to whether any non-governmental organizations had been involved in the process of preparing the fourth periodic report.

48. Mr. BÁN commended the representative of Spain for an excellent report and welcomed the seriousness with which the reporting country had regarded the views adopted following the review of the third periodic report. With regard to legislation introduced in January of 1996 regarding the legal protection of minors, he wondered whether the concerns expressed by the Committee on the Rights of the Child had been taken into consideration when the legislation was drawn up. Those concerns related to the rights of parents to administer punishment reasonably and in moderation.

49. With regard to problems of racial discrimination which were discussed in paragraphs 21 and 22 of the report, he asked whether the introduction of new provisions of the kind discussed in those paragraphs had been preventative in nature or whether there already existed a number of cases which had led to the introduction of the new legislation.

50. Mr. KRETZMER sought clarification the discriminatory distinction made between citizens and non-citizens in Spain. He referred specifically to article 13 and article 14 of the Spanish Constitution, which specified that only Spaniards were entitled to certain rights and were equal before the law. Secondly, he asked how autonomous communities which were provided for in the Constitution were defined, especially with reference to the Basque people.

51. Lord COLVILLE noted that the International Covenant on Civil and Political Rights had clearly become part of the legislation of Spain, but so had the European Convention on Human Rights. In that regard, he asked the representative of Spain to discuss whether there had ever been a conflict in the Spanish courts between the International Covenant and the European Convention, and which instrument prevailed in such cases.

52. Mr. FRANCIS endorsed the emphasis on the need to introduce educational programmes to combat racial discrimination and said that community outreach programmes had been very useful in attempts to cope with such problems in many countries.

The meeting rose at 6 p.m.

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Fifty-sixth session

SUMMARY RECORD OF THE 1480th MEETING

Held at Headquarters, New York,
on Thursday, 21 March 1996, at 10 a.m.

Chairman: Mr. AGUILAR

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Fourth periodic report of Spain (continued) (CCPR/C/95/Add.1; HRI/CORE/1/Add.2/Rev.2)

Constitutional and legal framework within which the Covenant is implemented, state of emergency, non-discrimination, protection of the family and children, and rights of persons belonging to minorities (articles 2, 3, 4, 23, 24, 26 and 27 of the Covenant) (section I of the list of issues) (continued)

1. At the invitation of the Chairman, Mr. Ibarra, Mr. Borrego and Mr. Zurita (Spain) took places at the Committee table.

2. Mr. IBARRA (Spain), replying to questions raised at the previous meeting regarding the so-called "State of Autonomies" in Spain and the nature of the autonomy system, said that article 2 of the 1978 Constitution recognized and guaranteed the right to autonomy of the "nationalities and regions of Spain", thereby referring implicitly to the territorial communities granted autonomous status during the Second Republic, namely, Catalonia, the Basque Country and Galicia, and, by extension, to the provinces and island territories referred to in article 143 of the Constitution. In exercising their right to self-government, territorial communities could become Autonomous Communities by adopting a Statute of Autonomy. Spain now had 17 Autonomous Communities and two autonomous cities. Under the Constitution, every Statute of Autonomy was both a basic institutional norm of the Autonomous Community in question and an organic law of the State with constitutional rank. Each Statute of Autonomy established the governmental structure and the legislative, regulatory and executive powers of the Autonomous Community. The scope of a Community's powers could be extended by periodic revisions of its Statute of Autonomy. There were three categories of powers: those reserved exclusively to the State; those reserved exclusively to the Autonomous Community; and those pertaining exclusively to the State that it transferred to the Autonomous Community. Each of the 17 Autonomous Communities had its own parliament and an autonomous government headed by a president who exercised executive power and directed an autonomous administration. As a result, some areas formerly administered by the central Government were now administered by each Autonomous Community, a process of political and administrative decentralization that had entailed a transfer of human, material and organizational resources and of financial resources. Since 1980, over 1,000 transfer decrees benefiting the Autonomous Communities had been adopted, and approximately 50,000 government officials had become Autonomous Community officials. The Autonomous Communities were currently responsible for 25 per cent of the public expenditure in Spain.

3. As to the difficulties or conflicts experienced in building the system of autonomy, in legal and political terms, they had been mainly jurisdictional conflicts that had had to be resolved by the Constitutional Court. The major problems of constitutional interpretation - based essentially on articles 148

to 153 of the Constitution - had largely been resolved by 1990. Such disputes, which had reached a peak in 1986 with 96 cases, had thus subsequently declined to the point where only 4 disputes had been adjudicated in 1994.

4. Concerning terrorism related to the development of autonomy, the problem had been referred to inaccurately by Mr. Prado Vallejo as the "Basque problem". There was no Basque problem as such, but rather the pitting of democratic Basques against non-democratic Basques with a separatist agenda. He would make available to interested members of the Committee the latest 1995 report on violence in the Basque Country. The nationality of the Basque Country was recognized, along with that of all other Autonomous Communities, but also its "historic rights", which, together with that of the former Kingdom of Navarre, had been accorded special protection under the first additional provision of the Constitution. The Basque territory, composed of Alava, Viscaya and Guipúzcoa, was the first in Spain to be granted the status of Autonomous Community following a 1979 referendum in which approximately 53 per cent of the electorate of 1.5 million had voted in favour of autonomy, 3 per cent against, and 40 per cent had abstained. The three distinguishing characteristics of the Basque Country were cultural, financial and administrative: the Basque language was recognized as an official language, together with Spanish; the Basque Country enjoyed a unique form of financial self-government inherited from the nineteenth century, under which it collected all taxes within the territory and reimbursed the central Government for any services provided; and it was the only Autonomous Community to recruit and maintain its own autonomous police force. Since 1979, elections had been held in the Basque Country as in all other Autonomous Communities for both its own and the national parliaments. Currently, however, 80,000 Basques voted under a special political option that also offered a framework for the activities of the terrorists belonging to the Euzkadı ta Azkatasuna (ETA), a separatist movement that advocated violence to achieve its objective and had caused 800 deaths since 1978, having thus far in 1996 alone murdered three high officials and kidnapped two civil servants. Spain's 1978 Constitution allowed constitutional reform as the only means to a change of status. With its primarily criminal dimension reinforced by the special political option available to it, ETA stood alone in Spain as a determined enemy of democracy.

5. A number of questions had been raised about the independence of the judiciary in Spain. Mr. Prado Vallejo had confused the selection of judges and magistrates with the selection of members of the General Council of the Judiciary. Judicial power in Spain was exercised by judges and magistrates who were independent and had life tenure to exercise the power to judge and enforce judgements. Judges were not elected by the parliament but were career officials, chosen by competition and review on the basis of knowledge and merit. The General Council of the Judiciary, on the other hand, was a body entrusted by the Constitution with responsibility for disciplinary matters involving members of the judiciary and the administration of justice, without any actual power to judge. Twelve of the 20 members of the Council were appointed from the legal profession and the remainder from a wide range of other professions, under a system reviewed and approved by the Constitutional Court on the basis of the 1985 Judicial Power Organization Act. The judges and magistrates serving on the General Council were, indeed, elected to their posts by the parliament.

6. With regard to the protection of minors, the reasonable and moderate punishment of children by their parents permissible under article 154 of the Civil Code, which was virtually identical to that provision in the Napoleonic Code, had never caused any problems or led to the physical mistreatment of children, which was an offence punishable under the Criminal Code. The punishment in question in the Civil Code fell rather under the legitimate right of patria potestas. In the recent debates before the adoption of the 1996 Organic Law on the Legal Protection of Minors, that article of the Civil Code had been considered and endorsed. Under article 3 of the Organic Law, all international protection must be accorded to minors, especially the guarantees embodied in by the Convention on the Rights of the Child and other treaties to which Spain was a party.

7. Mr. BORREGO (Spain), turning to the questions raised on non-discrimination, said that Spanish citizens had no problems with access to the courts. Indeed, Roma (Gypsies) in Spain were guaranteed free legal aid, even under the new 1996 law. No reference had been made in the report to religious minorities because there was no problem with discrimination against them in Spain. Article 14 of the Constitution and the 1980 Religious Freedom Organization Act stipulated that there was to be no discrimination or inequality before the law on the grounds of belief, nor could there be any religious grounds for excluding an individual from public or private employment. Spain's replies to a questionnaire of June 1995 from the United Nations Special Rapporteur on Religious Intolerance regarding religious freedom in educational institutions would be made available to interested members of the Committee. The Special Rapporteur had come to Spain to investigate the treatment of a religious sect, the Nuevo Movimiento Religioso or Familia, and had seen for himself that police and administrative authorities had absolved the sect of any wrongdoing, and that no religious conflicts had been involved.

8. On the language question, he said that Spanish was the official language of the country, but that each Autonomous Community had its own official language as well. The Constitution avoided using language as an offensive weapon to divide Communities and article 3, paragraph 3, of the Constitution in fact stated that the wealth of the different forms of language in Spain was a cultural heritage demanding special respect and protection. Spain had changed considerably in that respect, and it had been a gratifying sight to see the various political leaders speaking their own languages on national television during the recent election campaign.

9. With regard to discrimination in the cultural area, a distinction had to be made between pathological acts by disturbed groups and allegedly racist acts by normal people. Spain had gone from being a country of emigration to one of immigration and racial conflicts therefore did exist. The problem, however, was less one of conflict between races than of conflict between the rich and the poor, a social problem in which race was incidental. Certain forms of conduct had been criminalized whenever they had started to cause a problem, and training programmes had been put in place in a number of institutions to instil the notion of racial equality. Finally, the Government had launched effective advertising campaigns designed to raise awareness of equality issues and present positive solutions to the problems caused by racism.

10. Mr. IBARRA (Spain), responding to questions about immigration and measures to eliminate discrimination against foreigners, referred the Committee to Spain's latest report submitted under the International Convention on the Elimination of All Forms of Racial Discrimination. At the most recent count, some 500,000 foreigners were legally registered resident aliens; that figure represented a substantial increase and was probably paralleled by an increase in the number of illegal immigrants. The Spanish Government considered illegal immigration to be a major problem which it was attempting to address within the framework of the Schengen Accord. Over 12,000 asylum requests had recently been granted or were pending.

11. As far as specific measures with regard to minorities were concerned, he stressed that education was a key plank in the Government's integration strategy. A substantial number of Roma children were entitled to educational assistance or compensation, and significant sums had been made available to provide new housing for Roma communities.

12. Turning to the issue of crimes of race hatred and xenophobia, he stated that it was still impossible to evaluate the true effectiveness of the preventive legal measures that had been taken. The only certainty was that xenophobic crime was a Europe-wide phenomenon that could only be dealt with through effective concerted action within the European Union. There was also a need to tighten up extradition procedures. Measures had also been taken to suppress the spread of xenophobic propaganda. Penalties for such crimes in Spain were not limited to those provided for in the Penal Code; the judicial authorities had a certain amount of latitude in matching a specific punishment to a specific crime.

13. Mr. BORREGO (Spain) said that, on the issue of the domestic application of the Covenant and specifically with regard to the question regarding provisional prison sentences, he wished to stress that reading the Spanish Constitution in isolation from the international treaties and agreements ratified by Spain might create the wrong impression as to how the system of provisional prison sentences worked. Essentially, there was not much in the way of constitutional jurisprudence on such sentences, and, consequently, the law had to be supplemented by article 9, paragraph 3, of the Covenant. The fact that the Covenant and other international instruments had been incorporated into the law of the land made such a procedure possible.

14. He confirmed that the Covenant was known to and applied in lower courts, and that its provisions were included in training programmes for judges and court officers. The Ministry of Justice and the Interior frequently received requests for clarification of points of law in the light of the Covenant from courts at all levels.

15. Regarding the question about conflicts between the Covenant and European human rights instruments, he explained that procedurally it was impossible for a communication to be examined simultaneously by two international human rights bodies. At the domestic level there was no conflict because the Covenant had been incorporated into Spanish legislation in the form of the new Constitution. Finally, Spain's experience in incorporating international legal instruments into its legislation had been highly successful in helping to resolve human

rights issues and shedding light on how Spain should interpret its constitutional requirements. As far as the sensibilities of Spanish citizens were concerned, he stressed that the pronouncements of international human rights bodies were accepted without question as part of Spanish law.

16. With regard to questions raised in connection with article 2 of the Covenant, he explained that Spain had assumed the obligation to provide effective administrative recourse regarding any violation of the Covenant. Assuming that the Committee had identified a violation, such a finding would give rise to a judicial recourse in Spain, and once the available recourses had been exhausted the matter would revert to the Committee. The only way to change that procedure would be to formulate a new Protocol. The Human Rights Committee was not the highest authority in the legal order of a ratifying State and there was no provision in Spain for the review of trials resulting from any view which the Committee might issue.

17. The views of non-governmental organizations had not been incorporated into the periodic report since its compilation was the sole responsibility of the Government and the opinion of any other organization would simply give rise to confusion.

18. He confirmed that to serve as a public official in Spain and to participate in Spanish elections it was necessary to be a Spanish national. He also indicated that article 14 of the Covenant was an integral part of Spanish law and as such guaranteed equality before the law of both Spanish and foreign citizens.

19. With reference to the controversial legislation on maintenance payments introduced in 1990 as part of the new Penal Code, he said that maintenance was payable to children as well as spouses. The Spanish legislation on that matter in no way violated article 11 of the Covenant; likewise, insolvent individuals could not be sent to prison merely on the grounds of being unable to fulfil a contractual obligation.

20. The formerly discriminatory distinction between legitimate and illegitimate children had been removed and both parents now had the right to exercise parental authority, whereas previously only the father had enjoyed that right in the eyes of the law. In certain circumstances where the traditional family unit had broken down, parental rights could be exercised by just one parent. Wherever possible or practicable, the views of the minor were sought in any arrangement where parental responsibility was not exercised jointly.

21. Finally, he confirmed the existence of a programme for training officials with a view to preventing discriminatory behaviour patterns, and stated that any attempt by the Government to set quotas for women's participation in public life would be unconstitutional and unfair. On the other hand, specific measures had been put in place to ensure equality of opportunity for women in public life. A detailed account of those measures could be found in the report Spain had submitted to the Fourth World Conference on Women in Beijing.

22. Mrs. CHANET asked the delegation to clarify whether the Covenant had actually been used as a basis for judicial decisions rather than simply as a

source of reference. The Covenant was more specific than Spanish law and did not seem to have been fully respected.

23. While the Spanish delegation had provided information on measures to combat racial discrimination and xenophobia there was a more serious problem, namely, the Basque problem. She had been surprised, in fact, to hear from the representatives of Spain that the Basque problem did not exist. She noted that the Statute of Autonomy had failed to put an end to violence by ETA and the grupos antiterroristas de liberación (GAL) and requested more details on that situation.

24. Mr. KLEIN asked whether the Basque population was considered by the Government to be a linguistic minority within the meaning of article 27 of the Covenant.

25. Mr. IBARRA (Spain) said that the situation of peace in the Basque Country could not be described as "the Basque problem". The democratic political parties represented over 90 per cent of the population of the Basque Country. The conflict was not between Basques and non-Basques or between Spain and the Basque Country but between those who used democratic means to resolve their problems and those who used violence and other crimes to achieve their political objectives, while exploiting the issue of the Basque independence as a pretext. The "Basque problem" was therefore a problem of political violence by ETA; the other problems were those entailed by the development of an autonomous State.

26. The Statute of Autonomy was not a perfect document, but it provided the organizational structure for self-government and set forth the legislative and executive powers of the Basque people.

27. The activities of the GAL organization had been prosecuted by the Spanish courts and judgements had been handed down on 9 December 1985, 13 November 1987, and 20 November 1991; the third judgement had been partially annulled by a judgement by the Supreme Court on 12 March 1992 which exhaustively defined the criminal activities of GAL and sentenced two former police officers for the crime of belonging to an illegal political association and for a series of murders and a number of other crimes all in connection with activities carried out in 1985, 1986 and 1987. Another case concerning the GAL organization was currently before the Supreme Court; two of the defendants were the former Minister of the Interior and Director of State Security.

28. All those trials demonstrated the strength of the Spanish legal system, which guaranteed the rights recognized in the Covenant, especially the right to equality before the courts, and also the right of the accused to a fair trial and to be presumed innocent until proven guilty.

29. There was now a conviction among the public that the activities of ETA must never be permitted to limit freedoms in Spain; the anti-terrorism policy was supported by the public and by all democratic political forces. In the years of struggle against terrorism, it had been found that the rule of law, and international cooperation, could effectively suppress terrorism; the enemies of democracy were well aware that the forces of democracy were determined to enforce the law.

30. The people who spoke Euskara, the Basque language, were not a linguistic minority within the meaning of article 27 of the Covenant. Under the law governing the use of Euskara the Basque administration was bilingual, the Basque parliament was bilingual, and all documents were issued in Spanish and Euskara. Translation and interpretation services were provided in the courts, and trials were often conducted in Euskara. The percentage of people speaking Euskara varied from district to district but was never more than 50 per cent of the population; and in most districts it was 20 to 30 per cent of the population.

31. Mr. BORREGO (Spain) said that normally the provisions of the Covenant were applied in Spain through interpretation of the law. Replying to the questions asked by Mrs. Chanet, he said there had been a case in which the accused had been kept in pre-trial detention because of the risk that he would escape and because of the very serious nature of the economic crimes of which he was accused.

Right to life, liberty and security of person, treatment of detainees and other persons deprived of their liberty and the right to a fair trial (articles 6, 7, 9, 10 and 14 of the Covenant) (section II of the list of issues)

Freedom of movement and expulsion of aliens, right to privacy, freedom of religion, right of assembly and of association, and right to take part in the conduct of public affairs (articles 12, 13, 17, 18, 21, 22 and 25 of the Covenant) (section III of the list of issues)

32. The CHAIRMAN read out section II of the list of issues concerning the fourth periodic report of Spain, namely: (a) any difficulties in the implementation of the regulations governing the use of weapons by the police and the national security forces during the period under consideration, and measures taken to prevent them from recurring; (b) general laws and regulations introduced to combat terrorism, rights and freedoms provided for under the Covenant which could be the subject of derogations or whose exercise was limited or restricted, and specific measures in response to the concerns voiced by the Committee during consideration of the third periodic report with regard to article 55 of the Constitution and the existence of "permanent emergency legislation" in that area; (c) follow-up to the Constitutional Court decision of 3 March 1994 declaring article 504 bis of the Criminal Procedure Act to be partially unconstitutional; (d) measures taken to prevent the recurrence of acts of torture and ill-treatment, and number of complaints lodged with the authorities during the period under consideration, alleging that persons deprived of their liberty had been victims of acts of torture or other inhuman or degrading treatment or punishment or of arbitrary detention, and prosecution of the perpetrators of such acts; (e) factors and difficulties, besides overcrowding in prisons and detention centres, likely to make it hard to implement article 10 of the Covenant; (f) specific measures taken after 1990, apart from the creation of new courts, to make tangible progress towards reducing the duration of trials, and overall impact of such measures on criminal and civil proceedings.

33. Under section III the issues were: (a) the situation regarding the amendment of legislation governing the right of asylum and refugee status, and details of the content and application of that legislation, particularly with

regard to the length of detention of those persons whose application for asylum had been rejected; (b) information in practice of legislation on the exercise of the right to freedom of religion, and differences between the status of the Catholic Church and that of other denominations; (c) legislation concerning the collection and protection of personal data referred to in paragraph 101 of the report and its practical implementations; (d) amendments relevant to the freedom of expression introduced in the draft reform of the Penal Code.

34. Mr. IBARRA (Spain), referring to issue (a) in section II, said that under the disciplinary regime for the police and security forces, the use of weapons in violation of the regulations for their use was a serious offence. There were similar provisions for the police of the Autonomous Communities in the Basque Country (17 July 1992), Navarre (3 February 1987) and Catalonia (21 October 1982). As noted in the report, the question was regulated in article 5 of the Organization Act No. 2/86. No difficulties had arisen in the implementation of those regulations, and therefore no measures had been taken in that respect; there was no reported situation in which the regulations had been violated with impunity.

35. On issue (b), regarding article 55 of the Constitution, he said that article 17, paragraph 2, of the Constitution provided for the maximum duration of pre-trial detention and article 18, paragraphs 2 and 3, guaranteed the inviolability of the home and of communications. That principle was further developed in the Criminal Procedure Act, as indicated in the report. No emergency legislation, permanent or otherwise, had been enacted under article 55 of the Constitution.

36. On the question of the application of the provisions in article 55, it should be borne in mind that that article referred to armed gangs as well as terrorist elements. In 1994, extensions of detention had been requested in 119 cases, and there had been extensions in 45 cases: in 22 cases, by over 48 hours; in 14 cases, by 24 to 48 hours; in 2 cases, by 12 to 24 hours; and in 1 case, by less than 12 hours. In 1995, there had been 133 cases, and extensions had been requested in 33 cases: in 3 cases, by 48 hours; in 19 cases, by 24 to 48 hours; in 3 cases, by 24 hours; in 2 cases, by 12 to 24 hours; and in 6 cases, by less than 12 hours.

37. Mr. BORREGO (Spain) said that, with regard to issue (c), article 504 bis of the Criminal Procedure Act had now been declared unconstitutional.

38. Mr. IBARRA (Spain), referring to issue (d), said that measures had been adopted to prevent ill-treatment of detained persons at all stages of the detention process; those measures had been recommended by the Committee established under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. At the time of detention, specialists in forensic medicine could examine a detainee, if he so wished. A common protocol had been adopted to standardize medical reports issued by forensic medical practitioners. Within detention centres, medical control was directly exercised by the judicial authorities and there was no risk that preventive measures would not be taken. Medical examinations were carried out at every stage to monitor the state of health of detainees. Medical registers had been standardized.

39. The crime of torture and other crimes against physical integrity were defined in paragraphs 173 to 177 of the new Criminal Code. Torture was punishable by imprisonment for two to six years in serious cases, and one to three years in less serious cases.

40. Mr. ZURITA (Spain), responding to issue (e), said that the detention policies of the Spanish Government were entirely guided by the principles of rehabilitation and reintegration of convicts, and modern prisons were designed not only for detention but also for social, cultural and occupational re-education of prisoners. As of 30 September 1995, the prison population of 46,266 was made up of 34,876 persons who had been convicted and 11,390 persons in pre-trial detention.

41. In 1991, the Government had adopted a plan for the restructuring of the prison system, which currently comprised 75 detention centres; the plan provided for the investment of 120 billion pesetas, the closure of the majority of detention centres built before 1980, and the construction of 15 new prisons, specially designed to take into account the new priorities and needs embodied in the plan. It was the Government's policy to have detention centres in all areas of the country, so that as many prisoners as possible could serve their sentences in facilities near their homes and families.

42. One of the most serious problems facing the Spanish prison system was that of drug addition and its treatment. A new action plan had been adopted in 1994, the main priorities of which were to control the supply and demand for illicit drugs by means of programmes of prevention and of assistance to drug abusers. The Ministry of Justice had distributed a number of circulars to those involved in the implementation of the plan, on subjects such as the treatment of detainees, government policy regarding illegal drug use among prisoners, and measures to prevent drug traffickers from continuing their activities while in detention. In addition, a new set of regulations for the prison system had been promulgated by royal decree in early 1996. The principle of scientific individualized treatment was being applied in order to provide detainees with the best possible preparation for their reintegration into society.

43. He gave the Committee detailed statistics regarding the number of prosecutions based on complaints of ill-treatment or torture. There had been a total of 5 convictions and 11 acquittals for minor offences (faltas) and 13 convictions and 6 acquittals for more serious offences (delitos).

44. Mr. BORREGO (Spain), commenting on issue (f), said that societies with high degrees of freedom, education and economic development were also those where there was the greatest number of court cases. A case in point was the large number of paternity suits in Spain in recent years. Such suits had been virtually non-existent under the old system. The State had an obligation to provide a system of justice which was free from undue delays. That entailed a duty on the part of the State to increase the numbers of judicial bodies when necessary, with appropriate geographical distribution and improved economic and human resources, and to improve the efficiency of the system of justice through computerization and other productivity measures, and appropriate inspection to ensure the proper functioning of the courts. A major restructuring of the basic rules governing legal proceedings was under way; it was a task of great

complexity and difficulty. One example of that restructuring was the introduction of accelerated *proceedings* in cases where the offender had been caught in flagrante delicto. A number of tasks, such as the auditing of accounts, had been removed from the jurisdiction of judges and entrusted to State employees and notaries public. Improved coordination between registrars and notaries had been introduced, thereby expediting real estate and other transactions. It was expected that that measure would lead to a reduction in the number of cases of fraud and also in the quantity of litigation involving real estate and property issues.

45. Turning to section III of the list of issues, he confirmed, with regard to the right of asylum and refugee status, that the bill amending Act No. 5/1984 of 26 March 1984 had been passed. As a result, a foreigner would not be deported while his request for asylum was still pending, and his situation would be the same as that of any other foreign national concerning residence permits and work permit, unless he fell into certain exceptional categories, such as persons having committed crimes against humanity or acts of racial persecution, terrorist acts, or offences against the safety of air or sea transport.

46. Mr. BORREGO (Spain), referring to issue (b), said that agreements had been signed with representatives of Islamic, Evangelical and other religious groups for the designation of persons who would provide instruction in those religious creeds in State schools, and whose salaries would be paid by the State. Apart from the fact that the majority of the people of Spain belonged to the Catholic church, there was absolute legal equality between it and the other religious groups in Spain. The various religious groups received equal treatment in all public institutions. There was no problem of discrimination on grounds of religious belief.

47. On the question of the enforcement of legislation concerning the collection and protection of personal data (issue (c)), he said that the goal of the legislation was to protect the right to privacy, which was among the most basic human rights. The highest degree of protection was given to data relating to such matters as political or religious beliefs; but information on matters such as credit history, racial origin, medical record and sexual orientation was also protected. An agency for data protection had been set up and had conducted campaigns to increase public awareness of the importance of protecting the privacy of individuals and what steps could be taken if that right was infringed.

48. As to issue (d), concerning amendments to bring the law on freedom of expression into line with the judgement of the European Court of Human Rights in the case of a person who had been prosecuted for the offence of "insulting the Government", he said that the Court had held that the principle of exceptio veritatis should have been applied in the case, and Spanish law had been amended accordingly.

The meeting rose at 1.05 p.m.